TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~450~~ 218

P. H. MORGAN ET AL., COMMISSIONERS OF THE BANK OF LOUISIANA, APPELLANTS,

vs.

JOHN THORNHILL, GEORGE L. THOMPSON, ISIDORE NEWMAN, AND SARAH WILLIAMS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED APRIL 27, 1870.

use of David Eubanks, will be $3,670.00, with interest at 7 per cent. from Novembnr 1st, 1866, (see decree, Record pages 66 to 68,) for the use of James M. Hatch and his wife, Sarah, the same amount, (see same pages,) and for the use of Geo. Eubanks, the same, subject to a credit of $683.03 which

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1 *Petition of review.—Filed January 22, 1870.*

Circuit court of the United States, fifth circuit and district of Louisiana.

JOHN THORNHILL & ALS. AND MRS. S. WILLIAMS *vs.* BANK OF LOUISIANA. } No. 6056, U. S. circuit court.

To the honorable the judges of the circuit court of the United States for the fifth circuit, district of Louisiana:

The petition of Philip Hickey Morgan, Charles E. Willoz, and Henry Bezon, commissioners of the Bank of Louisiana, residents of the State and district aforesaid, with respect, represents that the Bank of Louisiana was incorporated by an act of the legislature of the State of
2 Louisiana, approved April 7th, 1824, under the style and by the name of "The President, Directors, and Company of the Bank of Louisiana," and so to continue until the 31st day of December, 1870; that series of important events and occurrences took place during the late war, which warranted the institution of proceedings on the part of the State against the bank for the forfeiture of its charter; that accordingly, on the 1st day of May, 1868, a petition was filed by the attorney general of the State of Louisiana, in the sixth district court of New Orleans, which was a court of competent jurisdiction, praying for the forfeiture of the charter and the dissolution of the corporation. Upon this petition a judgment was rendered by said court on the 20th of May, 1868, in the following words, to wit:

"It is ordered and decreed that the charter of the Bank of Louisiana, an incorporated institution and body politic under the laws of the State, be declared forfeited, null and void; that the said corporation be dissolved and that its affairs be liquidated according to law."

3 That after the forfeiture of the charter of said bank, as above stated, three commissioners were appointed to liquidate the affairs of the bank, as provided and in accordance with the ninth section of the act of the legislature of said State, entitled "An act to provide for the liquidation of banks," approved March 14th, 1842; that your petitioners Philip Hickey Morgan and Charles E. Willoz were so appointed, and also John F. Irvine, who has since resigned, and your petitioner Henry Bezon has been appointed in his place; that said commissioners immediately after their appointment entered upon the discharge of their duties and were proceeding to liquidate the affairs of said defunct bank, pursuant to and in accordance with the laws of this State, until the 20th day of May, 1869, when they were arrested by proceedings in bankruptcy, instituted against the bank and these petitioners, to cause said bank to be adjudged bankrupt, by J. Thornhill, G. L. Thompson,
4 and Isidore Newman, as will appear by reference to the petition filed by them on the 20th day of May, 1869, in the United States district court for the district of Louisiana, a copy of which is annexed to and made part of this petition, marked "A," and also to the amended petition filed by the same parties on the 4th day of June, 1869, a copy of which is also hereto annexed and made part of this petition, marked B.

To these proceedings exceptions and an answer were filed by the said commissioners, verified by their oaths, copies of which are also annexed hereto and made part of this petition, marked "C."

Your petitioners further represent that, on the application of said

plaintiffs, two writs of injunctions were issued against them, copies of which are hereto annexed, marked "D" and "E."

Further represent that, on the 11th day of January, 1870, a judgment was rendered by the said United States district court, adjudging
5 the said bank to be a bankrupt.

Petitioners further represent that, on the 11th day of December, 1869, another petition was filed in said United States district court by Mrs. Sarah Williams, to cause said bank to be adjudged bankrupt; that your petitioners, as the only legal representatives of said defunct bank, filed a petition of intervention or answer in said suit, copies of which are hereto annexed and made a part of this petition, marked "F & G;" that the aforesaid judgment, rendered on the 11th day of January, 1870, was also rendered on said petition of Mrs. Sarah Williams; the said two suits being treated as consolidated cases, and but one judgment having been rendered in the two cases; a copy of said judgment is annexed to and made part of this petition, marked "I."

Further represents that, upon the application of said Mrs. Sarah Williams, an injunction was issued by said U. S. district court
6 against petitioners, a copy of which is also annexed to and made part of this petition, marked "K."

Now your petitioners, in their said capacities of commissioners of the Bank of Louisiana, respectfully represent that they are aggrieved and the creditors of said bank are also aggrieved and injured by the proceedings, orders, and judgment rendered in said cases, and believe the same to be erroneous and contrary to law; that the issuing and continuance of said injunctions has been, since the month of June last, and still is, working great injury to the creditors of said bank; that petitioners are prohibited thereby from defending or prosecuting the many suits now pending in which the said bank is a party, or to appear and protect its interests in any litigation now pending in which the said bank is interested, or to institute such legal proceedings as are
7 necessary to interrupt prescription on claims held by them as commissioners; that the judgment rendered in said suit is erroneous:

First. Because at the time of the institution of these proceedings in bankruptcy the said corporation had ceased to exist, having been dissolved and the charter thereof decreed to be forfeited by a court of competent jurisdiction, as stated above.

Second. Because no acts of bankruptcy have been proved against said bank or corporation.

Third. Because no acts whatever have been proved against said bank or corporation, nor has any act whatever been committed by said bank or corporation within the six months next preceeding the filing of said petition in bankruptcy.

And your petitioners pray that the orders made in said cause be suspended in their operation and legal effect, and that the superintending and revising jurisdiction conferred upon this court in such cases by the act of Congress entitled "An act to establish a uniform system of
8 bankruptcy throughout the United States," approved March 2, 1867, may be exercised by your honor, and that the said orders be examined, and, if found not to be warranted by law, set aside or rescinded, and that your petitioners be allowed to proceed with the execution of the trusts conferred upon them by law.

And your petitioners pray for the issuing of a writ from this court to restrain further proceedings in said suits, to be served on the parties to the same, and upon the United States marshal, commanding them to

desist from all further action in the premises. And they further pray for such further orders and decree in the premises as justice, equity, and the nature of the case may require.

(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
" CHARVET & DUPLANTIER,
" COOLEY & PHILLIPS,
Atty's for Petitioners.

We, the plaintiffs above named, do hereby make solemn oath that the statements and averments contained in the foregoing petition are
9 true so far as the same are stated of our own knowledge, and that other matters which are stated therein on information and belief are true, according to the best of our knowledge, information, and belief.

(Signed) P. H. MORGAN.
" C. E. WILLOZ.
" HENRY BEZON.

Sworn to and subscribed before me at New Orleans this 18th day of January.

[SEAL.] (Signed) D. URBAN,
Clerk U. S. Circuit Court 5th Circuit and District of Louisiana.

Order.

Let this petition be filed and the case fixed for a hearing before me, in chambers, in the custom-house, in the city of Mobile, on Monday, the 31st day of January, 1870, upon a statement of facts to be agreed upon by counsel on both sides, or evidence to be taken before a reg-
10 ister in bankruptcy, and that plaintiffs in both suits be notified by service upon them, or their attorneys, of this petition and order; and it is ordered that all further proceedings in the district court be suspended, and that the marshal be enjoined from taking any action under the judgment rendered by the district court in said two suits until the further order of this court.

January 21st, 1870.

(Signed) W. B. WOODS,
Circuit Judge for 5th Judicial Circuit of the United States.

Marshal's return on the foregoing petition.

Received, January 22d, 1870, by the U. S. marshal; on [on] the same day, month, and year, served a copy of the within petition and order on Mrs. Sarah Williams, through her attorneys, Clarke, Bayne & Renshaw, by delivering the same to Tho's Allen Clarke, a member of said firm, in person; and, on the 24th day of the same month and year, served a copy of the within petition and order on John Thornhill et als., through their attorney, Thomas Hunton, by delivering the same to him, the said attorney, in person.

New Orleans, January 24th, 1870.

(Signed) F. A. WOOLFLEY,
D'y U. S. Marshal.

11 Service accepted. New Orleans, January 24th, 1870.

(Signed) J. B. PACKARD,
U. S. Marshal.

Document "A," referred to in and filed with the foregoing petition.

To the Honorable E. H. Durel, judge of the district court of the United States for the district of Louisiana:

The petition of John Thornhill, George L. Thompson, and Isidore Newman, all of whom reside in New Orleans, and State of Louisiana, except the said Thompson, who resides in Schenectady, in the State of New York, respectfully shews that the said Thornhill is a creditor of the Bank of Louisiana, and P. H. Morgan, Charles E. Willoz, and John F. Irvine, the acting commissioners of the said bank, in liquidation, which said bank and commissioners had their domicil and place of business in the city of New Orleans for twelve months next preceding the date of the filing of this petition; that your petitioners' demand is provable against the said Bank of Louisiana, and against the said commissioners, in accordance with the provisions of the act of Congress
12 entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867; that he and his co-petitioners believe and allege that the said bank and the said commissioners owe, each of them, debts to an amount exceeding the sum of three hundred dollars; that your petitioner's (Thornhill's) demand exceeds the amount of two hundred and fifty dollars, and that the nature of the said demand is as follows, to wit: a certificate of forty shares of stock of the said bank of the value four thousand dollars on each share, of which one hundred dollars have been paid, that being the amount and nominal value of each share of said stock, which shares are owned by said Thornhill; that the said George L. Thompson is a creditor of the said bank and of the said commissioners for the sum of three hundred dollars; that the said demand is provable under the aforesaid act of Congress, and that the nature of said demand is as follows, to wit: three promissory notes of said bank for one hundred dollars each, payable on demand to bearer, which notes are held and owned by said Thompson, and which the said commissioners and the said bank have refused to pay on demand; that Isidore Newman is a cred-
13 itor of the said bank and of the said commissioners for the sum of two hundred and eighty-five dollars; that this demand is provable under the act of Congress aforesaid, and that the nature of said demand is as follows, to wit: notes of the said Bank of Louisiana, payable on demand to bearer, to the amount of two hundred and eighty-five dollars, which notes are held and owned by said Newman, and payment of which has been demanded by said bank and the said commissioners and been refused.

A' your petitioner further represents that within the six calendar months next preceding the date of this petition the said corporation, the Bank of Louisiana, being a banker, and the said commissioners, did, each of them, commit an act of bankruptcy, with the meaning of said act, in this:

That the said corporation, and its agents and commissioners, did, on the 1st day of February, 1869, and on the 19th day of May, 1869, and and on the 1st day of April, 1869, and continuously since those dates, suspended payment of its commercial paper, and has not, within
14 fourteen days from said dates, resumed payment of the same.

2°. That the said bank, being bankrupt and insolvent, and its affairs being administered by P. H. Morgan, Charles E. Willoz, and John F. Irvine, under color of a judgment and appointment by the sixth district court of New Orleans, rendered and made in the suit No. 21914

of the docket of the said court, did transfer to M. A. Becknell and L. Becknell, as petitioners are informed, a promissory note made and endorsed by them for the sum of $20,345 80, which was due, payable, and exigible in current money of the United States, and did receive therefor, from the said Becknells, notes of the said Bank of Louisiana, which were not worth fifty per cent. of the value of said notes; and that the said transfer was made with the intent to defeat, and did defeat, any delay the operation of the said act of Congress aforesaid to establish a uniform system of bankruptcy.

3°. That the said M. A. & L. Becknell were, on and since the sixth day of March, 1869, creditors, as petitioners are informed, of the said insolvent corporation, the Bank of Louisiana, to the amount of $20,345 80, as holders of its notes, and that the said banks, and its commis-
15 sioners, did, since the date aforesaid, pay the same by giving in payment certain assets of the said bank, with the intent thereby to give a preference to said creditors, and to defeat and delay the operation of the act of Congress aforesaid, the said corporation being, at the dates aforesaid, insolvent and bankrupt.

4°. That the said bank, and the said commissioners, its agents, have, since the 9th day of April, 1869, transferred assets of the said corporation, under a pretended authority derived from the said sixth district court of the parish of Orleans, to wit: a note of A. I. Paxton for $7,500, receiving therefor the sum of $750, the said Paxton being solvent; and that said transfer of said note was made with the intent to defeat and delay the operation of the said bankrupt law of the United States.

5°. That the said bank, its agents and commissioners, have, at divers dates within the next preceding six months, and since the first day of February last past, as pertitioners are informed, made payments to several persons, whose names are unknown to petitioners, with the intent thereby to give a preference to said persons, creditors of said bank, and to defeat and delay the operation of the said bankrupt act.

16 6°. That the said Morgan, Willoz, and Irvine, acting as commissioners of the said bank, and who are in charge of all its assets, are proceeding to liquidate the affairs of the said bank under a pretended authority derived from the said sixth district court, that within the past six months they have paid out of the assets of the bank salaries of commissioners and clerks, and office rent, as petitioners are informed; and all said payments, and each and every act of administration of the affairs of the said corporation by said Morgan, Willoz, and Irvine, with the assent, as petitioners allege them to be, of the said bank, were made with the intent to defeat and delay the operation of the said bankrupt act, and do give the administration of the affairs of the said insolvent corporation to the State court, and the commissioners appointed by said court, when, within the intent and meaning of the said bankrupt law, this honorable court has the sole and exclusive jurisdiction of the said insolvent corporation and of the administration of its affairs.

Your petitioners file herewith the said certificate of stock, and the said notes, and make the same part of this petition.

17 Wherefore your petitioners pray that the said Bank of Louisiana, and the said commissioners, P. H. Morgan, Charles E. Willoz, and John Irvine, in their capacity of commissioners as aforesaid, may be declared bankrupt, and that a warrant may be issued to take possession of the estate of said corporation in the hands of said commissioners, and that the same may be destributed according to law, and that such

further proceedings may be had therein as the law prescribes in such cases.

(Signed) JOHN THORNHILL.
" GEO. S. THOMPSON.
" ISIDORE NEWMAN.
" THOMAS HUNTON, *Attorney.*

Document "B," referred to in and filed with the foregoing petition.

No. 1056, in the district court of the United States for the district of Louisiana.

In the matter of the Bank of Louisiana, against whom a petition for adjudication of bankruptcy has been filed.

To the Honorable E. H. Durel, judge of the district court of the United States for the district of Louisiana:

This supplemental and amended petition of Jno. Thornhill,
18 George L. Thompson, and Isidore Newman, petitioning creditors, respectfully shows that, in the original petition filed herein, it is alleged that payment had been made by P. H. Morgan, C. E. Willoz, and John F. Irvine, acting as agents and commissioners of the Bank of Louisiana, to divers persons, unknown to petitioners, with the intent to defeat and delay the operation of the bankrupt law of the United States, and that such payments were made within six calendar months next preceding the filing of the petition.

Petitioners now aver that the said acting agents and commissioners are representing the Bank of Louisiana and administering its assets, with the assent of L. F. Generes, esqr., the last president, and the last board of directors of the said bank; that the said president and directors suffered, without objection, a judgment to be rendered against said bank, by virtue whereof a subsequent proceedings had in the suit No. 21914 of the docket of the late sixth district court of New Orleans, the assets, control, and management of the said bank were tranferred to the said acting agents and commissioners. And petitioners aver that the said bank, a corporation under the laws of Louisiana, suffered
19 its property to be taken under said legal process, with the intent thereby to defeat and delay the operation of the bankrupt law of the United States, approved March 2d, 1867.

And your petitioners aver that, within six calendar months next preceding the date and filing of the original petition, and of this amended petition, the said Bank of Louisiana, and the said acting agents and commissioners, did, a New Orleans, in the district aforesaid, on the dates hereinafter mentioned, make the following payments of money, to wit:

1°. On the 22d day of December, A. D. 1868, they paid to De Blanc and Perry, whose residence is unknown to petitioners, the sum of $300.

2°. On the 8th day of January, A. D. 1869, they paid to B. L. Lynch, esq., of New Orleans, in the district aforesaid, the sum of $500.

3°. On the 28th day of January, A. D. 1869, they paid to Miles Taylor, esq., of the city of New Orleans and district aforesaid, $150.

4°. On the 11th day of March, 1869, they paid to B. F. Deblieux, whose residence is unknown to petitioners, the sum of $150.

5°. On the 19th day of March, A. D. 1869, they paid to De
20 Blanc and Perry, whose residence is unknown to petitioners, the sum of $795 30.

Petitioners aver that, at the dates of the said several payments, the said bank, and the said agents and commissioners, in their capacity as such, were insolvent, and that each and all of said payments were made with the intent to give a preference to [to] the said creditors respectively, and with the intent to defeat and delay the operation of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867.

Petitioners aver that the said Bank of Louisiana committed all the acts of bankruptcy alleged in the original and this amended petition.

And they further show that this amendment is made in order to give notice of specific acts of bankruptcy and payments alleged, in general terms, in the original petition.

(Signed) THO. HUNTON, *Attorney.*
" GEO. L. THOMPSON,
" By THO. HUNTON, *Attorney.*
" ISIDORE NEWMAN.
" JNO. THORNHILL.

Document "C," referred to in and filed with the foregoing petition.

U. S. district court for the district of Louisiana, in bankruptcy, No. 1056.

21 In the matter of the petition of John Thornhill, G. L. Thompson, and Isidore Newman vs. P. H. Morgan, C. E. Willoz, and John F. Irwin, commissioners of the Bank of Louisiana, and the Bank of Louisiana.

Now come Philip H. Morgan, Charles E. Willoz, and John F. Irvine, in their capacities of commissioners of the Bank of Louisiana, and respectfully except to the petition and supplemental petition filed herein by plaintiffs, and to the right of the said petitioners to proceed against them as commissioners of the Bank of Louisiana, or as representing said bank in any other capacity, or against the said bank itself; and they also except to the order of court rendered herein, requiring them to file in court, on or before the 12th June, the statements mentioned in the same order, upon the following grounds, to wit:

1°. That neither the original nor amended petition shows any cause of action against these exceptors, nor any legal cause or grounds for adjudging them, or the said Bank of Louisiana, bankrupt under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, nor that
22 they are in any way amenable to said act.

2°. They except to the said supplemental and amended petition filed by petitioners on the fourth day of June, 1869, on the ground that it is not verified by the oaths of all the petitioners, and that the petitioner, John Thornhill, who alone has sworn to it, is not alleged to be, and is not in fact, such a creditor as is authorized by law to institute this proceeding in bankruptcy against them.

3°. These exceptors deny that they have any legal right or authority to stand in judgment in this proceeding for the said bank; the corporation heretofore existing in this State known as the Bank of Louisiana having been dissolved, and the charter of said bank forfeited by a judgment rendered by the late sixth district court of New Orleans on the 20th May, 1868, and these exceptors having been subsequently appointed and qualified as commissioners under the laws of this State solely for the purpose of liquidating the affairs of said defunct corporation.

4°. That the said corporation cannot be proceeded against, to be adjudged bankrupt, the said corporation not being in existence, having dissolved as above stated; that the aforesaid act of Congress does not apply to corporations which have no existence, and which are in-
23 capable of petitioning voluntarily to be adjudged bankrupt.

5°. That said bank cannot be proceeded against to be adjudged bankrupt without citing, to show cause, the president, directors, and stockholders thereof.

6°. They except to said order on the grounds that petitioners have no right to require the statements mentioned therein to be furnished until they have first duly proved their claims, which they have not yet done.

Therefore these exceptors pray that they be dispensed with furnishing said statements, and that said order be recinded, and that they be also dispensed with answering the said petitions, and that the same be dismissed at the costs of petitioners.

(Signed) WILLIAM H. HUNT,
" CHARVEY & DUPLANTIER,
" COOLEY & PHILLIPS,
Attorneys for Exceptors.

No. 1056, United district court, in bankruptcy.

JOHN THORNHILL AND OTHERS
vs.
THE BANK OF LOUISIANA.

Now come Philip Hicky Morgan, Charles E. Willoz, and John F. Irvine, in their capacities of commissioners of the Bank of Louisiana,
24 and, for answer to the petition and supplemental petition herein filed by petitioners, say they deny that they have committed any of the acts of bankruptcy set forth in said petitions, and aver that they should not be declared bankrupt for any cause in said petitions alleged.

Further answering, they adopt all the allegations contained in the exception herein filed by them on the 15th day of June, 1869, and pray that said exceptions, and the grounds thereof as set forth therein, be taken and considered as part of this answer.

Respondents allege that, in their capacity of commissioners, they have faithfully complied with the provisions of the laws of this State under which they were appointed, and have done no act but what was required of them by said laws and the oath which they have taken, but that all they have done as commissioners has been for the best interests of the creditors and stockholders of said bank, and under the sanction and direction of the sixth district court for the parish of Orleans, to the jurisdiction of which court respondents, as commissioners, are amenable.

Respondents expressly deny that petitioners are such creditors as are authorized by the act of Congress approved March 2d, 1867, to
25 institute these proceedings.

They allege that the notes filed by the petitioners Thompson and Newman are not commercial paper, nor such as is referred to in section 39 of said act of Congress.

Represents that, on the 16th day of September, 1861, the said late Bank of Louisiana suspended payment in specie of the circulation and banknotes issued by them, and also suspended payment in specie of all the obligations issued by said bank, and substituted thereof the currency

then in circulation in this State, to wit, confederate treasury notes, which were paid out by said bank, as well as all the other banks in New Orleans, in discharge of their obligations, until the 19th day of May, 1862, when an order, issued by Major General Butler, commanding the Department of the Gulf, "that the several incorporated banks pay out no more confederate notes to their depositors or creditors, but that all deposits be paid in the bills of the bank, United States treasury notes, gold, or silver."

Your respondents further represent that, at the time of said suspension of specie payment by said bank, to wit, on the 16th day of September, 1861, there was in the vaults of said bank several millions of dol-
26 lars in specie, and more than sufficient to pay all obligations and liabilities of the bank, all of which was removed therefrom by the directors and officers of the bank, of whom the petitioner John Thornhill was one, on or about the day of , and before the aforesaid general order was issued by General Butler; and that said bank, having on hand no United States currency, nor any means of procuring the same, and being indebted to depositors for a large amount, was compelled by the said order to issue its own notes to such depositors as required them, in lieu of and to represent the amount of their respective deposits; and that among the notes so issued were those filed herein by petitioners Thompson and Newman; that said notes were not issued, nor were they intended as currency, or as part of the circulation of the bank, nor was it expected or contemplated by [by] the parties that they would be redeemed on presentation; that suits have been instituted in the courts of this State by your respondents, in their said capacities, against the said John Thornhill and the other directors of said
27 bank, for the recovery of the assets of the bank, or their value, which suits are still pending.

Respondents aver that no payment, sale, or transfer of any property, rights, money, or credits of said bank has been made by them since their appointment as aforesaid, with intent to give any preference to any creditor or creditors of said bank, or to defeat or delay the operation of said act of Congress, nor was any act whatever been done by them with such intent or for such purpose.

Wherefore your respondents pray that the said petition and amended petition, filed herein, be dismissed at the cost of petitioners.

(Signed) P. H. MORGAN.
" C. E. WILLOZ.
" J. F. IRVINE.

We, the defendants above named, make solemn oath that the statements and averments contained in the foregoing answer are true, so far as the same are stated of our own knowledge, and that other matters which are stated therein on information and belief are true, according to the best of our knowledge, information, and belief.

(Signed) P. H. MORGAN.
" J. F. IRVINE.
" C. E. WILLOZ.

28 Sworn to and subscribed before me this 21st day of June, 1869.

(Signed) CH'S CLAIBORNE,
U. S. Commissioner.

Document "D," referred to in and filed with the foregoing petition.

First petition for injunction.—Filed June 17th, 1869.

To the honorable judge of the district court of the United States for the district of Louisiana:

The petition of John Thornhill and others, petitioning creditors, respectfully shows that they are informed that an application has been made to the honorable sixth district court of New Orleans to obtain an order of sale of the assets of the Bank of Louisiana, which application is still pending.

Your petitioners show that such a sale and disposition of said assets would defeat the operation of the bankrupt law herein.

Wherefore they pray your honor will issue an injunction restraining and enjoining P. H. Morgan, C. E. Willoz, and John F. Irwin, individually and as acting commissioners of said bank, from making any
29 transfer or disposition of any part of the assets of said bank, now in their possession, or under their control as commissioners of the Bank of Louisiana, or any payment out of said assets during the pendency of these proceedings.

(Signed) THO'S HUNTON, *Attorney.*

Let the writ of injunction issue, as prayed for.
June 17th, 1869.
(Signed) E. H. DUREL, *Judge.*

The President of the United States to P. H. Morgan, Ch's E. Willoz, and John F. Irwin, individually, and as acting commissioners of the Bank of Louisiana, greeting:

You are each of you, individually, and as acting commissioners of the Bank of Louisiana, are hereby commanded, in the name of the President of the United States, and of the United States district court for the district of Louisiana, sitting in bankruptcy, to refrain and desist from making any transfer or disposition of any part of the assets of said Bank of Louisiana, now in your possession, or under your control as commissioners of said Bank of Louisiana, or any payment out of
30 said assets, during the pendency of these proceedings; and you are so enjoined until the further order of this court.

Witness the Hon. E. H. Durel, judge of our said court, at New Orleans, this 17th day of June, 1869.

(Signed) CHA'S CLAIBORNE, *Clerk.*

Document "E," referred to in and filed with the foregoing petition.

To the Honorable E. H. Durel, judge of [of] the district court of the United States for the district of Louisiana, sitting in bankruptcy:

The petition of John Thornhill et als., petitioning creditors, respectfully shows that, in order to preserve all the assets and claims of the Bank of Louisiana in their present condition during the pendency of these proceedings, it is necessary that this honorable court should issue an additional restraining order.

Wherefore petitioners pray this honorable court for an injunction restraining P. H. Morgan, C. E. Willoz, and John F. Irvine, acting commissioners of the said bank, from all ligitation with reference to the rights or assets of the said Bank of Louisiana, and from making any

compromise touching the rights or assets of the said bank, and from any interference with the property or assets of the said Bank of Louisiana, otherwise than to hold the same as they now stand, subject to the further order of the court herein; and that all other persons be enjoined and restrained from any interference with the assets or property of the said bank during the pendency of these proceedings. And your petitioners pray for all necessary and proper orders in the premises.

(Signed) THO'S HUNTON,
Attorney for Petitioning Creditors.

Writ of injunction allowed, as prayed for, except that the same is not to affect the payment of the proper salaries of said commissioners and their employees.

July 1st, 1869.

(Signed) E. H. DUREL, *Judge.*

The President of the United States to P. H. Morgan, C. E. Willoz, John F. Irvine, acting commissioners of the bank of Louisiana, greeting:

You, and each of you, are hereby enjoined and restrained, in the name of the United States of America, and of the district court of the United States for the district of Louisiana, from all ligitation with reference to the rights or assets of said bank, and from making any compromise touching the rights or assets of said bank, and from interfering with the property or assets of the said Bank of Louisiana otherwise than to hold the same as they now stand, subject to the further order of the court in the premises.

It is further ordered that this injunction shall in no manner affect the payment of the proper salaries of said commissioners and their employees.

Witness the Honorable E. H. Durel, judge of said court, at New Orleans, this 1st day of July, 1869.

(Signed) K. LAVY, *De'y Clerk.*

Document "F," referred to in and filed with the foregoing petition.

No. 1066, U. S. district court.

SARAH WILLIAMS, WIDOW, &C., }
vs. }
BANK OF LOUISIANA. }

To the Honorable E. H. Durel, judge of the district court of the United States for the district of Louisiana:

The petition of Sarah Williams, (widow of Henry Williams,) of the city of New Orleans, in the parish of Orleans & State of Louisiana, respectfully shows that she is a creditor of the Bank of Louisiana, which, for a period of twelve months next preceeding the date of the filing of this petition, has had its domicil at the city of New Orleans, parish of Orleans, State of La., and district aforesaid; that the said bank is a corporation, moneyed, business, and commercial, & has been such for 20 years & more by virtue of the laws of the State of Louisiana; that your petitioner's demand is provable against the said Bank of Louisiana, in accordance with the provisions of the act Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867; that she

believes said Bank of Louisiana owes debts to an amount exceeding the sum of $300 00; that your petitioner's demand exceeds the amount of $250 00; and that the nature of your petitioner's demand against the said Bank of Louisiana is as follows: Three several certificates of deposits of said Bank of La., signed Aug. Montreuil, cashier of said bank, for $100 00 each, No. 561, dated New Orleans, January 7th, 1863; No. 687, dated New Orleans, March 9th, 1863; No. 574, dated
34 New Orleans, January 26th, 1863; declaring each that Mrs. Sarah Williams has deposited in said bank the sums aforesaid for the use, & payable only to order of herself, endorsed on said certificate and its return, payable one year after date, and bearing seven $\frac{30}{100}$ per cent. interest per annum until maturity, & on which interest has been paid up to 7th January, 1864.

And your petitioner further represents that, within the six calendar months next preceeding the date of this petition, the said Bank of Louisiana did commit sundry and divers acts of bankruptcy within the [the] meaning of said act, to wit: That the said Bank of La., being a banker, some time before the filing of this petition, has suspended and refused payment of its commercial paper, & has not resumed the same within a period of 14 days, nor at any time since; that one John Henry, having obtained a judgment against said Bank of Louisiana in the third district court of New Orleans, on the 2d of March, 1868, said judgment being signed on the 20th March, 1868, for the sum of $7,816 50, moneys deposited in said bank, & five per [per] centum per annum
35 interest thereon from 24 April, 1862, issued an execution or fieri facias upon said judgment, & thereunder seized property of said bank; that thereupon, to wit, on or about the 1st day of May, 1868, an application was made to the sixth district court of New Orleans by the attorney general of the State of Louisiana, and in the name of said State, for a forced surrender of said Bank of Louisiana, & the liquidation of its affairs, said application being based on the act of the State of Louisiana entitled "An act to provide for the liquidation of banks," approved 14th March, 1842, & for the liquidation of its affairs in the manner provided by said act; that although, at the time of said application, the act of 1842, on which it was based, was no longer in force, the same having been repealed by acts of the State of Louisiana, or suspended in its operation by the act of Congress entitled "An act to establish an uniform system of bankruptcy," approved March 2d, 1867, no opposition was made by said bank to said application, but, on the contrary, said bank did assent to the same, and did all in its
36 power to expedite & facilitate proceedings thereon, & did suffer judgment by default to be rendered, and to be confirmed on 20th May, 1868, by which judgment all its property and assets of every description were surrendered into the possession, & placed under the control, of certain persons who were appointed by said court commissioners to liquidate the affairs of said bank, and said court did, at the same time, order all proceedings against said bank to be stayed, and said bank did acquiesce in said judgment and allow the same to be executed, and still continues to acquiesce therein and allow said commissioners to retain possession of all the property and assets of said bank, and did thereby suffer & procure, & does still suffer & procure, its property to be taken on legal process, issued on & by virtue of said judgment, with intent to give a preference to some of its creditors, specially the holder of circulating notes of said bank, over all other creditors, and to make the distribution of its assets according to the State laws of bankruptcy & insolvency in conflict with the provisions of

37 the bankrupt law aforesaid; that by said proceedings & judgment said John Henry was prevented from further executing his aforesaid writ of fieri facias, & all other persons having claims or being creditors of said Bank of Louisiana were and are prevented by the order of said sixth district court of New Orleans from prosecuting at law the said Bank of Louisiana; that said order is still existing; that, so existing, it is a bar in all the courts of Louisiana against the prosecution of said bank for any indebtedness; that the said three commissioners received from said bank all the funds & effects of the same, & hold them & distribute them at their own pleasure, & defy all attempts to make them subject to the claims of your petitioners & others; that said commissioners so assume to act for the said Bank of Louisiana, & as its proper officers, & with the assent of said bank, & maintain & assent the powers & authorities of the acts of Louisiana, under color of which the said proceedings in the sixth district court of New Orleans were instituted & are carried on; that as such they assume to pay the debts of said bank at discretion, and at all times assent that
38 the creditors, other than holders of the notes of said bank, have no right or claim upon the assets or funds thereof until the said note holders are paid; that said bank has paid, within the six months prior to the filing of this petition, the following sums to persons pretending to be creditors of said bank, to wit:

Farrop & Chamberlain	$200 00,	on or about	June	30,	1869.
Clerk 6th dis't court N. O	65 50	"	"	"	"
Sheriff parish of Orleans	108 83	"	"	"	"
Felix Grima	800 00	"	"	"	"
Dudley & Nelson	88 30	"	Oct.	22d,	"
Sun Mut. Ins. Company	42 50	"	"		"
City of New Orleans	192 60	"	"		"
Clerk 6th dis't c't p'sh Orleans	280 10	"	"		"
F. Grima	10 00	"	"		"
Collector of tax, parish of Concordia, La	392 50	"	"		"
Do do	471 63	"	"		"
Do do	150 95	"	"		"
James Buckner	500 00	"	Novb.	1,	1869.

That said acts of said so-styled commissioners are & continue to be the acts of persons assuming to act for the Bank of Louisiana, and not repudiated by said bank, but suffered to be done; that the acts of the legislature of Louisiana, under color of which the said commissioners pretend to act, have been repealed, & no longer exist; that the
39 pretended priorities or preference awarded, contended, and allowed, are such as existed under bankrupt & insolvent laws of the State of Louisiana, & such only, & that the same have been suspended by the act of Congress of the U. S. aforesaid.

Now your petitioner avers that said Bank of Louisiana has within the last six months removed all of its property with intent to avoid its being taken on legal process; that the said bank has transferred its estate, property, rights, & credits within the United States, with intent to delay & hinder its creditors; that the said bank, being insolvent & bankrupt, has within the last six months made the payments aforesaid, with intent to give preference to the creditors aforesaid, & has within the last six months procured & suffered its property to be taken on the alleged legal process of said sixth district court of New Orleans, with

intent to give a preference to its creditors by circulating or bank note; that said payments, and said procurement, & sufferance of its property to be taken as aforesaid was & is with the intent to defeat & de-
40 lay the operation of the act of Congress of the U. S. approved March 2d, 1867, entitled "An act to establish a uniform system of bankruptcy throughout the United States."

Wherefore petitioner prays that the said Bank of Louisiana may be declared a bankrupt, & that a warrant may be issued to take possession of its estate; that the same may be distributed according to law, & that such further proceedings may be had thereon as the law in such case prescribes.

(Signed) SARAH WILLIAMS. *Petitioner.*
" C. M. CONRAD & SON,
" J. B. EUSTIS,
" CLARK, BAYNE & RENSHAW, *Att'ys.*

U. S. OF AMERICA, *District of Louisiana, ss:*

I, Sarah Williams, (widow of Henry Williams,) the petitioner above named, do hereby make solemn oath that the statements contained in the foregoing petition subscribed by me are true, so far as the same are stated of my own knowledge, & that those matters which are stated therein on information & belief are true, according to the best of my knowledge, information, & belief.

(Signed) SARAH WILLIAMS, *Petitioner.*

41 Subscribed and sworn to before me this 11th day of December, A. D. 1869.

(Signed) C. S. KELLOGG,
Register in Bankruptcy.

A true copy.
Clerk office, N. Orleans, December 21st, 1869.
[SEAL.] (Signed) CH'S CLAIBORNE, *Clerk.*

Document "G," referred to in and filed with foregoing petition.

MRS. SARAH WILLIAMS
vs.
BANK OF LOUISIANA. } No. 1066.

Now come Philip Hickey Morgan, Charles E. Willoz, & Henry Bezou, commissioners of the Bank of Louisiana, & for the reasons hereinafter set forth respectfully ask to intervene in & become parties to the above suit, & to show cause why the prayer of the plaintiff & petitioning creditor should not be granted.

Intervenors allege that the Bank of Louisiana was a corporation incorporated by the act of the legislature of this State, approved April 7th, 1824; that, having in various ways violated the provisions of its charter, the State of Louisiana, through its attorney general, instituted suit against the bank for the forfeiture of its charter, & the dis-
42 solution of the corporation on the first day of May, 1868. This suit was brought by the State in a court of competent jurisdiction, to wit, the sixth district court of New Orleans, and, on the 22d day of May, 1868, a judgment was rendered by said court decreeing the charter of said bank to be forfeited and the corporation dissolved; that, under & in pursuance of the laws of the State of Louisiana pro-

viding for the liquidation of banks whose charters are decreed to be forfeited, or which have gone voluntarily into liquidation, your intervenors have been duly appointed commissioners to liquidate the affairs of said bank, & in [in] their said capacity all the property of said bank is by the laws of said State vested in them, & they have taken oath & given heavy bonds to administer and distribute the same in accordance with those laws.

Further represent that, by reason of the said judgment, the Bank of Louisiana is dead, & has not been in existence since the 22d day of May, 1868.

Intervenors expressly deny that any act done by them since the
43 22d day of April, 1868, or since their appointment as commissioners, has been done by the authority of the Bank of Louisiana, or any of its officers, but solely under & by virtue of the laws of the State of Louisiana, & that no payment, sale, or transfer of any property, rights, money, or credits of said bank has been made by them with the intent to give preference to any creditor or creditors of said bank, or to defeat or delay the operation of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the U. S.," approved March 2d, 1866, nor has any act whatever been done or committed by them, either as commissioners or in any other capacity, with such intent or for such surpose.

Further aver that said bank should not be declared bankrupt for any cause in said petition alleged.

Intervenors therefore pray that the said petition filed herein on the 11th day of December, 1869, may be dismissed at the cost of petitioner.

(Signed) COOLEY & PHILLIPS.
" CHARVET & DUPLANTIER.

We, the undersigned plaintiffs in the foregoing petition of in-
44 tervention, do hereby make solemn oath that [that] the statements & averements contained in the foregoing petition of intervention are true, so far as the same are stated of our own knowledge, & that other matters which are stated therein on information & belief are true according to the best of our knowledge, information, & belief.

(Signed) P. H. MORGAN.
" HENRY BEZON.

Sworn to & subscribed before me this 24th December, 1869.
(Signed) K. LOEW, *U. S. Com'ss.*

A true copy.
Clerk's office U. S. district court, La., January 14th, 1870.
[SEAL.] (Signed) K. LOEW, *D'y Clerk.*

Document "I," referred to in and filed with foregoing petition of review.

District court of the United States of America for the district of Louisiana, holding sessions in the city of New Orleans, November term, A. D. 1869.

NEW ORLEANS, *Tuesday the 11th day of Jan'y*, 1870.

Court met pursuant to adjournment. Present, the Honorable Edward H. Durel, judge.

JNO. THORNHILL
vs.
BANK OF LOUISIANA. } No. 1056.

SARAH WILLIAMS, W'W,
vs.
SAME. } No. 1066.

45 The court being satisfied, from a due consideration of the law and the evidence, that the facts set forth in the petition were true, &c., it is therefore adjudged that the Bank of Louisiana became bankrupt within the true intent & meaning of the act entitled "An act to establish a uniform system of bankruptcy throughout the U. S.," approved March 2d, 1867, before the filing of the said petitions. For reasons orally assigned, the said Bank of Louisiana is therefore declared and adjudged bankrupt accordingly.

It is further ordered that said bankrupt shall, within 30 days after the date of this order, make and deliver to the marshal, as messenger, a schedule of its creditors & inventory of its estate & verified in the manner required by the petitioning debtor by said act.

And it is further ordered that the parties holding any of the property of the said bank surrender the same to the proper officers of this court.

True copy from the minutes in bankruptcy of Janu'ry 11th, 1870.

(Signed) K. LOEW, *D'y Clerk.*

46 *Document "K," referred to in and filed with the foregoing petition*

United States of America, district court of the United States for the district of Louisiana.

SARAH WILLIAMS, WIDOW, &C.,
vs.
BANK OF LOUISIANA. } No. 1066.

The President of the United States to P. H. Morgan, E. E. Willoz, & Bezon, greeting:

You, and each of you, are hereby enjoined and restrained from alienating, transferring, or otherwise disposing of the property or assets of the Bank of Louisiana, or from paying any of the debts thereof & from interfering with the property, rights, or credits of said bank until the further orders of this court.

Witness the Hon. E. H. Durell, judge of said court, at New Orleans, this 11th day of December, 1869.

[SEAL.] (Signed) K. LOEW, *D'y Clerk.*

A true copy.
Clerk's office, New Orleans, Jan'y 14th, 1870.

[SEAL.] (Signed) K. LEOW, *D'y Clerk.*

47 *Notice of petition of review No. 6056.—Filed Janu'y 22d, 1870.*

JOHN THORNHILL ET ALS. & MRS. SARAH WILliams
vs.
BANK OF LOUISIANA. } Nos. 1056, 1666, U. S. dis't court.

To John Thornhill, Isidore Newman, George L. Thompson, and Mrs. Sarah Williams, the petitioning creditors and plaintiffs in the above suits:

You are hereby notified that a petition will be presented by the de-

fendants, the commissioners of the Bank of Louisiana, to the honorable the judges of the United States circuit court for the twelfth circuit of Louisiana, praying for a review and revision of the proceedings, orders, and judgment rendered the above causes by the United States district court sitting in bankruptcy for the district of Louisiana.

(Signed) COOLEY & PHILLIPS,
Att'ys for Defendants.

Service of the above note is accepted.
New Orleans, Janu'y 12th, 1870.
(Signed) THO'S HUNTON,
Att'y for Thornhill et als.
CLARK, BAY & RENSHAW,
For Mrs. Williams.

48 *Exception & answer of Mrs. Williams to petition of Morgan et als.—Filed January 29th, 1870.*

United States circuit court, fifth circuit, district of Louisiana.

JOHN THORNHILL ET ALS. & MRS. SARAH WILLIAMS *vs.* BANK OF LOUISIANA. } No. 6056.

Mrs. Sarah Williams, made a party to the petition in the above-entitled cause, excepts to the same on the ground following:

1st. That said petitioners were not parties to the proceedings in the United States district court for Louisiana taken by her against the Bank of Louisiana to have said bank declared a bankrupt.

2°. That said petitioners are not aggrieved by said proceedings & the decree therein.

3°. That said petitioners are not legal representative of said Bank of Louisiana.

4th. That the act of the general assembly of Louisiana, under color of which said petitioners claim to represent the said Bank of Louisiana, which was approved March 14th, 1842, was repealed by acts of the general assembly of said State, and the proceedings
49 had in the fifth district court of New Orleans were without warrant of law, and therefore null and void.

5th. That all the laws, under color of which said petitioners claim to exercise authority as commissioners of the Bank of Louisiana, are & were bankrupt & insolvent laws, & are and were suspended by the act of Congress of the United States approved March 2d, 1867, entitled "An act to establish a uniform system of bankruptcy throughout the United States," and therefore said petitioners are without right or authority to interfere in these proceedings or the business or affairs of said Bank of Louisiana, & the petition should be dismissed, for which she prays.

If these exceptions are overruled, and not otherwise, the said Sarah Williams, in answer to said petitioners, says that she denies all and singular the allegations thereof except as hereinafter specially admitted.

And this defendant, further answering, saith that the Bank of Louisiana was chartered by the legislature of Louisiana by an act of the general assembly of said State, approved ; that, pursuant to the powers conferred by said charter, it entered upon and con-

50 tinued business as a monied corporation until ,
when, being insolvent, it sought the interposition of the public authorities of Louisiana, as stated in this respondent's petition, filed in the district court of the United States for district of Louisiana; that she now reiterates all the allegations of her said petition; that she avers that the same are true; that the said Bank of Louisiana was duly summoned to answer said petition, &, making default thereon, was duly decreed a bankrupt by said court, as will appear by the transcript of the record of said proceedings, which respondent herewith files as part of this answer.

Wherefore she prays said petition of said Morgan, Willoz, & Bezon be dismissed at their costs.

(Signed) SARAH WILLIAMS.

Sworn to and subscribed before me this 29th day of January, 1870.

(Signed) C. S. KELLOGG,
Register in Bankruptcy.

Clark, Bayne & Renshaw, C. M. Conrad & Son, James B. Eustis, of counsel.

51 *Exception for want of territorial jurisdiction, filed nunc pro tunc as of* 31 *Janu'ry*, 1870.—*Filed March 7th*, 1870.

In bankruptcy, No. 1056, dis't court of the United States for the district of Louisiana.

JOHN THORNHILL ET ALS.
vs.
BANK OF LOUISIANA & ALS.

On the petition of P. H. Morgan, Charles E. Willoz, and Henry S. Bezon.

And now appear John Thornhill, George L. Thompson, and Isidore Newman, made parties defendants to the petition of the said Morgan, Willoz, and Bezon, and, not confessing the allegations of the said petition to be true, do now except and plead to the jurisdiction of this court and to the jurisdiction and authority of the hon. judge of the fifth judicial district of the United States, sitting in the city of Mobile, in the State of Alabama, to hear and determine the cause presented by the said petition, and to revise, in chambers or otherwise, at Mobile, a decree rendered by the district court of the United States for the district of Louisiana; and, for cause of exception and plea, they say that by the act to establish a uniform system of bankruptcy throughout the
52 United States, approved March 2d, 1867, the general superintendence and jurisdiction of all cases and questions arising under the said act is granted only to the several circuit court of the United States, or to any justice thereof, within and for the district where the proceedings in bankruptcy shall be pending; and in this case the proceedings in bankruptcy are pending in the district of Louisiana.

Wherefore they pray judgment whether they shall furher answer and this exception and plea be maintained and the petition and the injunction granted thereon be dismissed.

(Signed) THO'S HUNTON,
Of Counsel.

Exception to jurisdiction of court to revise, filed nunc pro tunc as of 31s Jan'ry, 1870.—Filed March 7th, 1870.

In bankruptcy, district court of the United States for the dis't of Louisiana.

JOHN THORNHILL ET ALS.
vs.
THE BANK OF LOUISIANA & ALS.

On the petition of P. H. Morgan, Charles E. Willoz, and Henry Bezon.

John Thornhill, G. L. Thompson, and J. Newman, made parties defendants to the said petition, not confessing the allegations thereof to be true, do now except and plead to the jurisdiction of this court
53 or of the judge now here sitting, and, for cause of exception and plea, say that the decree or adjudication of bankruptcy rendered against the Bank of Louisiana cannot, in accordance with law, be reviewed or revised by any court whatever; the judgment of this court whether they are bound to answer said petition.

Wherefore they pray that the said petition be dismissed.

(Signed) THO'S HUNTON,
Of Counsel.

Exception for want of authority or interest, &c., filed nunc pro tunc as of 31 January, 1870.—Filed March 7th, 1870.

In bankruptcy, No. 6056, in the dis't court of the United States for the dis't of Louisiana.

JOHN THORNHILL ET AL.
vs.
BANK OF LOUISIANA ET ALS.

On the petition of Charles E. Willoz, P. H. Morgan, and H. Bezon.

And now appear John Thornhill, George L. Thompson, and Isidore Newman, made parties defendants to the said petition, and, by protestation, not confessing any of the allegations of the said petition to be true, do now plead and except thereto, and for cause of exception
54 and plea say:

First. That the said Morgan, Willoz, and Bezon are not the legally appointed commissioners of the Bank of Louisiana, as alleged and set forth in the petition, and have no right or authority in law to represent the said Bank of Louisiana in suit No. 1056.

2d. That said Morgan, Willoz, & Bezon are not aggrieved by the adjudication of bankruptcy rendered against the Bank of Louisiana, and have no such interest in the assets of the said bank as to authorize this hon. court to grant the prayer of their said petition, or to intertain the same.

Wherefore they pray that the judgment of this court whether they are bound to answer said petition; that the said petition of Morgan, Willoz, and Bezon be dismissed, and the injunction herein granted be discharged.

(Signed) THOM. HUNTON,
Counsel for Thornhill et als.

Statement of fact in Thornhill's case, filed nunc pro tunc as of 31 *Janu'ry*, 1870.—*Filed March 7th*, 1870.—*No.* 6056.

55 In bankruptcy, No. 1056, dis't court of the U. S. for the dis't of Lou's'a.

THORNHILL ET ALS.
vs.
THE BANK OF LOUISIANA.

Upon the petition of P. H. Morgan, C. E. Willoz, and H. Bezon, com's's, to the judges of the circuit court of the United States for the fifth circuit, district of Louisiana.

The following is a statement of facts agreed to by the undersigned attorneys:

1st. The whole of the appendix to the brief of Messrs. "Cooley & Phillips, attorneys for the commissioners," except the statement of the condition of the bank on the two last pages, is to be taken as a part of this statement of facts.

2°. At the date of the filing of the petition of Thornhill et als. the outstanding circulation or notes of the bank amounted to $869,968 00. There was due depositors at that date $329,529 00; and the cash on hand at the same date was $11,957 08.

3°. On the trial petitioning creditors put in evidence 30 notes of the Bank of Louisiana protested for non-payment on the 19th of May, 1869, held by them, and amounting to $585 00, provable under the bankrupt act.

56 4°. The creditors proved on the trial that the acting commissioners of the bank had paid, within six months prior to the filing of their petition, to Miles Taylor, De Blanc & Perry, B. F. Deblieux, & B. L. Lynch, debts exceeding $1,500 00, which were due and owing by the bank prior to the appointment of the commissioners, and that the said commissioners, from the date of their appointment up to the 24th of June, 1869, paid out altogether, for salaries and office expenses and on other claims, the sum of $18,577 62.

5th. It is admitted that the Bank of Louisiana, at the date of the filing of the petition for a forfeiture of its charter by B. L. Lynch, attorney general, and at the date of the appointment of the commissioners, owed debts exceeding the sum of $300 00.

6°. It is admitted, as proved on the trial, that the bank had not paid or redeemed any of its banknotes after the 1st of January, 1869, nor since the appointment of the commissioners.

7°. John Thornhill is holder and owner of forty shares of stock of the bank, of $100 each, fully paid up, and was such owner when his petition was filed.

57 8°. There is now in the hands of Morgan et als., commissioners, all the assets of the bank. They have on hand an amount exceeding $9,000 in cash, and other assets to the amount of $100,000 00.

The salaries of the acting commissioners of the banks, claimed as allowable by the State law, is $3,000 per annum each. It is not admitted, however, by Thornhill et als., that the so-called commissioners were wrightfully or legally appointed as such.

9th. Service of the original and amended petitions in suit No. 1056 was acknowledged by L. F. Generes as the last elected and last acting president of the bank on the 10th December, 1869.

10th. It is admitted that the Bank of Louisiana was under the control of a board of directors, and L. T. Generes was president, duly elected, and that the bank was occupying its long-established banking-house, attending to its business up to the date of the decree of forfeiture by the sixth district court, and that, since the election of Generes as president, no other election of president has taken place.

58 11th. A copy of the charter of the bank is annexed as a part of this.

12th. On the 1st and 20th May, 1868, the bank was utterly unable to pay its then existing liabilities and debts then due to note holders, depositors, and others.

The above are the facts proved on the trial of suit 1056.

(Signed) THO'S HUNTON,
Att'y for Thornhill et als.
COLLEY & PHILLIPS,
For Petitioner.

58[1] A A.

An act to incorporate the subscribers to the Bank of Louisiana. Published by order of the board of directors. Fourth edition. Charter granted April 7, 1824. New Orleans: Isaac T. Hinton, book and job printer, 27 Commercial Place. 1867.

58[2]

58[3] *An act to incorporate the subscribers to the Bank of Louisiana.*

A bank of the State of Louisiana established, with a capital of 4,000,000 dollars, etc.

SECTION 1. *Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened*, That a bank of the State of Louisiana shall be established, with a capital of four millions of dollars, divided into shares of one hundred dollars each share, twenty thousand shares, amounting to the sum of two millions of dollars. Part of the capital of said bank shall be subscribed and paid for by the State of Louisiana, in the manner hereinafter specified, and twenty thousand shares, amounting to the sum of two millions of dollars, shall be subscribed and paid for by individuals, companies, or corporations, in the manner hereinafter specified.

Of the subscriptions by individuals, etc.

SECTION 2. *And be it further enacted*, That subscriptions for the sum of two millions of dollars, towards con-
58[4] stituting the capital of said bank, shall be opened at New Orleans on the third day of May next, under the superintendence of five commissioners, to be chosen by the legislature by a joint ballot of the two houses, and shall continue open every day from the time of opening the same, between the hours of ten o'clock in the forenoon and three o'clock in the afternoon, until thirty days after the bank shall have gone into operation, when the same shall be closed. The commissioners, or a majority of them, shall immediately thereafter proceed to take an account of the said subscriptions; and if more than the amount of two millions of dollars shall have been subscribed, exclusive of the shares subscribed for on behalf of the State, then

said commissioners shall deduct the amount of such excess from the largest subscriptions, in such manner as that no subscription shall be reduced in amount while any one remains larger; and, in case of such deduction, the said commissioners shall cause lists of such apportioned subscriptions to be made out, that the subscribers may thereby ascertain the number of shares apportioned to them respectively. And in case the full amount of twenty thousand shares shall not have been subscribed at the time of closing the subscription books, then the said subscription books shall be opened under the superintendence of the board of directors, to be appointed as hereinafter specified, on the first Monday in January in each year, and shall continue open for thirty days in each year, until the full number of twenty thousand shares, exclusive of the shares subscribed for by the State of Louisiana, shall have been subscribed. The time when, and the house where, the subscription book will be opened shall be advertized by the commissioners, in the several newspapers published in New Orleans, for twenty days previous to opening the same.

The books to be opened on the first Monday in January.

58[5]

SECTION 3. *And be it further enacted*, That the amount of the shares to be subscribed by individuals, companies, or corporations shall be paid in specie as follows, to wit: fifteen days before the first election of directors, one-fifth into the hands of the aforementioned commissioners, who shall deposit the amount of said fifth, as it shall be paid in, in the Louisiana State Bank, as special deposits, and afterwards pay the whole amount of the same into the Bank of Louisiana, immediately after the election and appointment of the president and directors thereof; two-fifths in one year after it shall go into operation; and the remaining two-fifths two years after the payment of the last-mentioned two-fifths: *Provided, however*, That it shall be lawful for the subscribers, or any of them, to pay up the full amount of the subscription at their own option: *And provided also*, That no subscriber shall be entitled to any dividend upon any portion of his subscriptions so paid in within three months previous to the time of declaring such dividend.

Regulations for payments by subscribers.

58[6]

SECTION 4. *And be it further enacted*, That at the opening of the subscription to the capital stock of the said bank, the treasurer of the State shall subscribe, or cause to be subscribed, the said number of twenty thousand shares, amounting to two millions of dollars as aforesaid, to be paid in the manner following, to wit: immediately after the election and appointment of the first directors, as hereinafter specified, the treasurer of the State shall deliver to the directors bonds in such sums as the directors may appoint, payable by the State to the order of the president, directors, and company of the bank, which bonds shall bear an interest of five per centum per annum, payable half-yearly, and shall be delivered at the rate of one hundred dollars in bonds for every eighty-three dollars and one-third of a dollar of stock. These bonds shall be at the following terms, that is to say: bonds for six hundred thousand dollars shall be payable at the end

The State to subscribe for 20,000 shares payable in State bonds.

58[7]

of ten years from the date thereof; bonds for the further sum of six hundred thousand dollars, at the end of fifteen years from the date thereof; bonds for the further sum of six hundred thousand dollars, in twenty years from the date thereof; and bonds for the further sum of six hundred thousand dollars, in twenty-five years from the date thereof, which bonds shall be in the form following, to wit:

Form of bonds.

"(L. S.) Know all men by these presents, that the State of Louisiana acknowledges to owe to The President, Directors, and Company of the Bank of Louisiana, the sum of..... dollars, current money of the United States of America,
58[8] which sum of money the said State promises to pay to the said president, directors, and company, their successors and assigns, on the... day of....., with interest at the rate of five per centum per annum, payable half-yearly, to wit: on the....day of....., and the....day of....., in each and every year, until the payment of the said principal sum.

"In testimony whereof the governor of the State of Louisiana has signed these presents and caused the great seal of said State to be hereunto affixed, at New Orleans, this.... day of....., in the year of our Lord eighteen hundred and twenty-four.

Governor.

Treasurer."

Of their execution and assignment.

Which bonds shall be under the seal of the State, and signed by the governor, and countersigned by the treasurer, and may be assigned by the endorsement of the president and cashier of the bank, on the back thereof, either to the order of any person, or to the bearer; and such endorsement shall appoint the place where the half-yearly interest on such bonds shall be paid. All expenses attending the issuing of such bonds to be paid from the funds of the bank.

The faith of the State pledged for their payment.

58[9] SECTION 5. *And be it further enacted*, That the faith of the State of Louisiana shall be, and the same is hereby, pledged for the payment of the principal and interest of the said bonds upon the falling due thereof, and also that the stock of the State, in the bank hereby incorporated, be pledged for the said payment: *Provided*, That the interest to be paid by the State of Louisiana upon the bonds aforesaid shall only accrue from the day on which they shall be respectively negotiated.

The bank to sell the bonds.

SECTION 6. *And be it further enacted*, That it shall be the duty of the said bank to sell for specie, and at least at the same rate at which they shall have received them, the bonds to be subscribed by the State, as hereinbefore specified, for the account of said bank, and to contract for the payment of the interest thereof, at such place or places as to the president or directors may seem expedient: *Provided*, That any additional charges, loss on exchange, or other expenses, which may be consequent upon the payment of such interest in any other place than New Orleans, shall be wholly de-

Of the payment of the interest.

frayed by the funds of the bank: *And provided also,*
58[10] That any profit, in exchange or otherwise, which may accrue from paying the interest in any other place than New Orleans, shall be for the benefit of said bank.

Appropriation of the dividends on the stock held by the State.

SECTION 7. *And be it further enacted,* That the president and directors of the said bank shall deduct from the semi-annual dividends, to be declared as hereinafter specified, such portion of the accruing dividends, upon the stock subscribed by the State of Louisiana, as aforesaid, as shall be sufficient to pay the half-yearly interest which may have grown due upon the bonds of the State, issued as aforesaid;

Sinking fund.

and that the surplus of such dividends shall constitute a sinking fund, under the administration of the treasurer of the State, and the president and cashier of said bank, for the redemption of such bonds, and that until the full payment and extinguishment of bonds to the amount of six hundred thousand dollars, no part of such dividends shall be appropriated to any other purpose than to the payment of the interest and extinguishment of the principal of such bonds: *Provided, however,* That after the redemption of six hundred thousand dollars, part of the capital of said bonds,
one-fourth part of the semi-annual dividends upon
58[11] the stock held by the State in said bank may be applied to the current purposes of the State, but that no greater portion of such dividends shall be applied as last aforesaid, until the redemption of the further sum of six hundred thousand dollars of the capital of said bonds, when one-half of such dividends may be applied to the current use of the State, and no greater amount until the final extinguishment of the debt to be created under and by virtue of this act.

Further provisions for the payment of the interest of the bonds.

SECTION 8. *And be it further enacted,* That if the dividends on the stock, held by the State in the said bank, shall at any time be insufficient to pay the installments of interest on the principal of said bonds, as the same may become due, that said bank shall supply such deficiency and charge the same to the account of the State, and for the payment thereof the faith of the State is hereby pledged.

The subscribers to the bank incorporated, etc.

SECTION 9. *And be it further enacted,* That the subscribers to the said bank, their successors and assigns, shall be, and are hereby, created a corporation and body politic, by the
name and style of "The President, Directors, and Com-
58[12] pany of the Bank of Louisiana," and so shall continue until the thirty-first day of December, in the year one thousand eight hundred and seventy, and by that name shall be, and are hereby, made capable to buy, receive, and possess all kinds of property, either immovable or movable, and to loan, negotiate, sell, grant, alien, demise, or dispose of the same, and to take mortgages and pledges, and to buy and sell bills of exchange and checks, and to discount on banking upon banking principles, on such credit and on such security as they shall think advisable, provided it does not exceed in value the double of their capital, exclusive of moneys employed in the purchase and sale of bills of exchange, and to sue and be sued, plead and be impleaded, answer and be answered in all courts having competent jurisdiction, and

to have a common seal, and the same to alter and renew at their pleasure, and to ordain and establish such by-laws and ordinances as they shall deem necessary and convenient for the government of said corporation, not being contrary to this act nor to the Constitution or laws of the United States or this State.

Thirteen directors, six by the State and seven by the subscribers, etc.

58[13] SECTION 10. *And be it further enacted*, That, for the management of the affairs of the said corporation, there shall be thirteen directors, stockholders, six of whom shall be appointed annually by the governor and senate, and seven shall be annually elected at the banking house in the city of New Orleans, by the qualified stockholders of the capital of said bank, other than the State of Louisiana, and by a plurality of votes, then and there actually given, according to the scale of voting hereinafter prescribed. As soon as five thousand shares shall be subscribed for, as provided for in the second section of this act, the governor, who is hereby authorized to make the appointment, shall appoint six directors on the part of the State, to serve from the time of their appointment until the first Monday in February next; and in every subsequent year the appointment by the governor and senate of six directors shall be made on the second Monday of January, or within the six following days, in each and every year; and the directors so appointed shall be capable of serving, by virtue of such

58[14] appointment, from the first Monday in February following until the first Monday of February in the year ensuing.

First election of directors, etc.

SECTION 11. *And be it further enacted*, That, as soon as the subscription shall amount to five thousand shares, exclusive of the amount subscribed for by the State, the commissioners shall give public notice thereof in at least two of the newspapers published in the city of New Orleans, and by the same notice they shall appoint the day and place for the stockholders to meet for the purpose of electing seven directors, which day shall not be within fifteen days from the date of such notice. The seven directors, who shall have been elected in the meeting which shall be held in pursuance of such notice, by the plurality of votes given by the stockholders or their attorneys, according to the scale hereinafter specified, together with those appointed by the governor as aforesaid, shall be the first directors, and shall be capable of serving until the first Monday in February next; and the said directors shall proceed to elect one of the directors to be president of the bank; and the person so elected shall be capable of serving in that capacity, by

58[15] virtue of such election, until the first Monday in February next.

Annual election of directors, etc.

SECTION 12. *And be it further enacted*, That the annual election of seven directors, by the stockholders of said bank, shall, after the first election, be held at the banking house in the city of New Orleans on the fourth Monday of January in each and every year; and the said directors shall be elected by the stockholders, other than the State of Louisiana, or their attorneys, by a plurality of votes then and there given, according to the scale hereinafter specified;

and they shall be capable of serving, by virtue of such election, from the first Monday in February following until the first Monday of February in the year ensuing. And the board of directors, annually, at the first meeting after their election in each and every year, shall elect one of the directors to be president of the corporation, who shall hold the said office during the same period for which the directors are appointed and elected, as aforesaid: *Provided always*, That, in case it should at any time happen that an appointment or election of director, or an election of the pres-
58[16] ident of said bank should not be so made as to take effect on any day when, in pursuance of this act, they ought to take effect, the said corporation shall not, for that cause, be deemed to be dissolved; but it shall be lawful at any other time to make such appointments, and to hold such elections, as the case may be; and the manner of holding the elections shall be regulated by the by-laws and ordinances of the corporation; and, until such appointments or elections be made, the directors and president of said bank, for the time being, shall continue in office: *And provided also*, That in case of vacancy, arising from the death, resignation, absence from the United States, non-acceptance, refusal to qualify, or removal of a director from office, the vacancy shall be supplied by the board of directors, or by the governor and senate, as the case may be.

Proviso in case of vacancy.

Powers of the directors.

SECTION 13. *And be it further enacted*, That the directors, for the time being, shall have the power to appoint such officers, clerks, and servants under them as shall be necessary for executing the business of the said corporation, and to allow them such compensation for their services,
58[17] respectively, as shall be reasonable, and shall be capable of exercising such other powers and authorities, for the well governing and ordering of the affairs of the said corporation, as shall be prescribed by the by-laws, regulations, and ordinances of the same.

Oath to be taken by the president, &c.

SECTION 14. *And be it further enacted*, That the president, directors, cashier, and other officers, as well of this bank as of the offices of discount and deposit hereinafter specified, before they enter upon the duties of their respective offices, shall take and subscribe the following oath or affirmation in the presence of any magistrate:

"I, A. B., do solemnly swear [or affirm, as the case may be] that I will faithfully and impartially, without favor or affection, discharge the duties incumbent on me as ..... according to the best of my abilities and understanding."

And the said oath or affirmation shall be filed in the said bank, or office of discount and deposit, as the case may be, and no other oath or affirmation shall be required from the said president, directors, cashier, and other officers.

Fundamental articles.

58[18] SECTION 15. *And be it further enacted*, That the following rules, restrictions, limitations, and provisions shall form and be fundamental articles of the constitution of the said corporation, to wit:

Rule concerning voting for directors.

First. The number of votes to which the stockholders shall be entitled, in voting for directors, shall be according to the number of shares he, she, or they, respectively, shall

hold, in the proportions following, that is to say: For each and every share, not exceeding four shares, one vote; for every two above four, and not exceeding thirty, one vote; for every four shares above thirty, and not exceeding ninety, one vote; for every six shares above ninety, and not exceeding one hundred and fifty, one vote; and for every ten shares above one hundred and fifty, one vote. But no person, copartnership, or corporation shall be entitled to a greater number than one hundred votes; and, after the first election, no share or shares shall confer a right of voting which shall not have been holden three calendar months previous to the day of election. In all elections of directors, votes may be given either in person or by proxy. Scale of voting.

58[19] *Second.* Two partners shall not be eligible at the same time as directors of this bank, nor shall a director of any other bank, or his partner, be a director of the Bank of Louisiana. Two partners not eligible, etc.

Third. Not more than four of the directors appointed on the part of the State, and not more than five of the directors elected by the stockholders, who shall be in office at the time of an annual election, shall be appointed or elected for the ensuing year, and directors going out cannot be replaced by the partner of the said commercial house or firm; and if, at any annual election, more than five directors in office shall receive a plurality of votes over other persons voted for, no more than five of such directors, being those having the greater number of votes, shall be elected; and the person or persons, other than such directors, having the greater number of votes, shall be elected; and in such cases, if the director shall receive an equal number of votes, or if the two or three lowest on the ticket should receive an equal number of votes, it shall be determined by lot which of the directors shall not be elected. Part of the directors not to be re-elected or re-appointed.

58[20] *Fourth.* No person shall be capable of being appointed or elected a director of said bank who does not possess, in his own and private name, or in the name of the commercial house of which he may be a partner, at least thirty shares of the stock of said bank, and, after the first appointment and election, no person shall be capable of being appointed or elected a director of said bank who has not possessed as aforesaid the said number of thirty shares for six months next proceeding the day of such appointment or election. No director shall be entitled to any emolument; but the directors may make such compensation to the president for his extraordinary attendance at the bank as to them may seem reasonable; and no person shall be appointed a director on the part of the State who is not a citizen of the United States. Qualification of directors, etc.

Fifth. Not less than seven directors, of whom the president to be one, shall constitute a board for the transaction of business, discounts excepted. And for discounts not less than five directors, of whom the president to be one, shall constitute a board: *Provided*, That, in case of sickness Number required to constitute a board.

58[21] or necessary absence of the president, his place may always be supplied by any other director whom the board of directors may appoint.

Bonds to be given by the cashier and other officers.

Sixth. The cashier, before he enters on the duties of his office, shall be required to give bond, with two or more sureties to the satisfaction of the directors, in a sum not less than fifty thousand dollars, with a condition for the faithful performance of his duties to the corporation; and all the other officers and clerks, who may be appointed by the directors of said bank, shall give bond, with one or more sureties to the satisfaction of the said directors, in such sum as the directors may determine, with a condition as required in the case of the cashier.

Of the transfer of stock.

Seventh. The stock of the said corporation shall be assignable and transferable, according to such rules as shall be prescribed in that behalf by the laws, regulations, and ordinances of the same.

The notes of the bank obligatory; and of the assignment thereof.

Eighth. The notes of the said bank, signed by the president, and countersigned by the cashier, promising a payment in money, to any person or order, or to the bearer, shall be obligatory on the said bank, though they
58[22] should not have the seal thereof; and any of the said notes, payable to order, shall be transferable and negotiable by endorsement, and those payable to the bearer shall be negotiable and transferable by delivery.

Half-yearly dividends, and triennial meetings.

Ninth. Half-yearly dividends shall be made of so much of the profits of the bank as shall appear to the directors advisable, and once in every three years the directors shall lay before the stockholders at a general meeting, for their information, an exact and particular statement of the affairs of the bank, and of the surplus profits, if any, after deducting losses and dividends.

In the case of failure in the payment of any part of the subscription the benefit of dividend to be lost.

Tenth. If there shall be a failure in the payment of any part of any sum subscribed to the capital of said bank by any person, copartnership, or corporation, the party failing shall lose the benefit of any dividend which may have accrued prior to the time of making such payment, and during the delay of the same.

Any director becoming insolvent to be incapable of serving.

Eleventh. If any director shall fail, or become insolvent after his appointment or election, he shall thereby become incapable of serving in that capacity, and his place
58[23] shall be supplied in the manner provided for in the twelfth section of this act.

Limitation of interest to be taken by the bank.

Twelfth. The said corporation shall not take more than nine per centum per annum upon any of its loans or discounts, nor shall it take more than at the rate of six per centum per annum upon any of its loans or discounts made upon promissory notes, which shall be payable within four months after such loan or discount.

Two millions appropriated to be loaned on mortgage security.

Thirteenth. Two millions of the capital stock of the said bank shall be appropriated to the sole purpose of being loaned upon notes or bonds, secured by mortgages on immovable property, to the satisfaction of the board of directors: *Provided*, That no mortgage shall be taken upon land which is not in a state of cultivation, and that no more than one-half of the net value of the real property to be mortgaged, after deducting all previous mortgages or incumbrances, shall be lent by said bank upon the same.

Fourteenth. No director of the mother bank, or any of the offices of discount and deposit hereinafter mentioned, shall be entitled to a credit by virtue of his office; and no 58[24] director as aforesaid shall obtain any other or higher credit than that to which such director would be entitled in his individual capacity; and it shall be the duty of the said bank, and of the said offices of discount and deposit, not to make or allow any discount or loan to any person or persons who, to their knowledge, may intend to employ the money obtained by such discount or loan in lending or discounting the same at a higher rate of interest than fixed by law as conventional interest.

No director entitled to any higher credit by virtue of his office, etc.

SECTION 16. *And be it further enacted*, That the stock of the said corporation, to be subscribed by the State, shall not be alienated before the complete redemption of the bonds hereinbefore specified: *Provided, however*, That if upon the falling due of any of the capital of said bonds, the sinking fund, established by this act, shall not be sufficient to redeem the same, that it shall be lawful for the State to sell a sufficient portion of said stock for the payment of such bonds.

Stock of the State inalienable, except, etc.

SECTION 17. *And be it further enacted*, That the said corporation shall not at any time suspend or refuse payment in current money of the United States of any of its 58[25] notes, bills, or obligations, or of any moneys received upon deposit in said bank. And if the said corporation shall at any time suspend or refuse payment as aforesaid, the holder of any such note, bill, or obligation, or the person or persons entitled to demand and receive such moneys as aforesaid, shall be entitled to recover interest thereon from the time of such suspension or refusal until the same shall be fully paid at the rate of twelve per centum per annum.

Corporation not to suspend specie payments.

SECTION 18. *And be it further enacted*, That if the said bank should not go into operation by the first day of March next, then the legislature shall have the power, at any time before it actually commences its operations, to declare this act null and void.

In case the bank does not go into operation before the first of March next, this act may be annulled.

SECTION 19. *And be it further enacted*, That the president and directors shall keep a book, in which all the proceedings of the board shall be entered and recorded, as well as the number of votes, including the yeas and nays, on all questions decided, when the same shall be demanded by a member of the board, together with the names of the voters; and any three or more stockholders, holding together 58[26] in their own right not less than one thousand shares, may, within one month preceding each election, examine the said book, on application by them made for that purpose either to the president or cashier of the bank; and the legislature shall have the power, at all times, to appoint a committee to examine the said book and minutes of proceedings, more particularly the amount of specie on hand, the amount of notes in circulation, and an exact list of balances due to the said bank, the amount of deposits and all other affairs in said bank, and for the purpose of ascertaining the situation of the same, and report thereon to the

Minute book to be kept by the board of directors, &c.

legislature, to call a general meeting of the stockholders, and to authorize the said meeting to remove from office any director or directors, and to appoint others in their place for the residue of the year.

No tax to be laid on the stock.

SECTION 20. *And be it further enacted*, That the stock of the corporation created by this act shall be exempt from taxation by the State, or by any parish or body politic under the authority of the State, for the whole term of this charter.

Subscriptions to be received at several places, etc.

58[27] SECTION 21. *And be it further enacted*, That the sum of fifty thousand dollars of the capital of this bank, to be subscribed for by individuals, companies, or corporations, as provided for in the second section of this act, shall be reserved for subscriptions at St. Francisville, and the sum of twenty-five thousand dollars for subscriptions in each of the following places, viz: Donaldsonville, Baton Rouge, St. Martinsville, and Alexandria, under the superintendence of three commissioners for each of the aforesaid places, to be chosen by the legislature, by a joint ballot of both houses, which commissioners, or a majority of them, shall perform all the obligations and fulfil all the duties that are imposed upon the commissioners chosen to receive subscriptions in New Orleans, according to the provisions of the second section of this act.

Offices of discount and deposit to be established.

SECTION 22. *And be it further enacted*, That there shall be five offices of discount and deposit established, to wit: one at Donaldsonville, for the parishes of St. James, Ascension, Assumption, Lafourche Interior, Terrebonne, and Iberville, with a capital of two hundred thousand dollars; one

58[28] at St. Francisville, for the parishes of East and West Feliciana, and Point Coupee, with a capital of two hundred thousand dollars; one at St. Martinsville, for the parishes of St. Mary, St. Martin La Fayette, and St. Landry, with a capital of two hundred thousand dollars; one at the town of Alexandria, for the parishes of Rapides, Avoyelles, Catahoula, Concordia, Ouachita, and Natchitoches, with a capital of two hundred thousand dollars; and one at Baton Rouge, for the parishes of East and West Baton Rouge, Washington, St. Helena, and St. Tammany, with a capital of two hundred thousand dollars, the capital of which branches shall be loaned, in the parishes for which they are established, in proportion to the State tax paid by each, three months after they shall respectively go into operation, after which time any sum which may not be loaned agreeably to the distribution herein contained may be loaned without regard to said distribution and division.

When capital shall be advanced to the offices.

SECTION 24. *And be it further enacted*, That as soon as the bonds to be subscribed by the State, as hereinbefore specified, shall have been negotiated to the amount of

58[29] twelve hundred thousand dollars, the said offices of discount and deposit shall, each of them, receive one-half of their above-mentioned respective capital, and shall immediately thereafter go into operation; and as soon as said bonds shall be negotiated to the amount of eighteen hundred thousand dollars, they shall receive an additional fourth part of their said capital, and as soon as the whole

amount of the aforesaid bonds shall be negotiated, it shall be the duty of the mother bank to give to the said offices the remaining fourth of their said respective capital.

Directors of the offices to be appointed, etc.

SECTION 24. *And be it further enacted*, That there shall be annually appointed, by the board of directors of the Bank of Louisiana, to administer the affairs of the said offices, five directors for each of the said offices of discount and deposit, who shall choose from among themselves a president, and shall be subject to all such regulations, rules, and by-laws as may from time to time be adopted by the board of directors of the said mother bank, for the government of the said offices, not inconsistent with the provisions of this charter: *Provided*, That the persons to be appointed
58[30] directors in pursuance of this section shall be stockholders in the stock of said bank.

A cashier for each of the offices.

SECTION 25. *And be it further enacted*, That there shall be appointed for each of the aforesaid offices of discount and deposit, by the board of directors of said mother bank, one cashier, who shall give, for the faithful performance of his duties towards the corporation aforesaid, such security as shall be required by the said board of directors of the said mother bank.

Regulations for the offices, and concerning mortgages.

SECTION 26. *And be it further enacted*, That two-thirds, at least, of the capital of each office of discount and deposit shall be appropriated by them, for the purpose of loaning or discounting upon mortgages, and that the board of directors of said offices of discount and deposit shall, when required, loan or discount on hypothecary bonds or on notes secured by mortgages at twelve months, agreeably to the rule laid down in the thirteenth article, section the fourteenth, of this act; and that the person or persons to whom such loans or discounts shall have been made shall be allowed, at the end of the said twelve months, to
58[31] renew their said bonds or notes for twelve months longer, during the space of five years from the date of their respective loans or discounts: *Provided*, They pay and reimburse, at the time of each renewal, one-fifth of the whole sum originally loaned or discounted to them, as well as the interest upon the sum for which their said bonds shall thus be renewed, so that, at the expiration of the said five years, the whole sum loaned or discounted to them, together with the interest thereon, be entirely paid and extinguished.

Not more than $5,000 to be loaned by the offices to an individual without authority.

SECTION 27. *And be it further enacted*, That there shall not be loaned or discounted in any of the said offices of discount and deposit, either directly or indirectly, to any individual, company, or corporation, a greater sum than five thousand dollars, without the express authorization of the board of the directors of the mother bank.

Bonds and mortgages to be made in favor of the corporation.

SECTION 28. *And be it further enacted*, That all the hypothecary bonds loaned upon, and all mortgages given to secure the payment of, notes discounted by any of the said offices of discount and deposit, shall be made in favor of the president, directors, and company of the Bank of Louisiana.

Persons obtaining loans on mortgage entitled to renewal, as by the 26th section.

58[32] SECTION 29. *And be it further enacted*, That every person or persons to whom, or in whose favor, loans or discounts shall have been made upon mortgages by the board of directors of the mother bank shall be entitled to the same advantages as are secured to persons to whom, or in whose favor, such loans or discounts are to be made, by virtue of the twenty-sixth section of this act.

Mortgages to be recorded before the money paid.

SECTION 30. *And be it further enacted*, That it shall not be lawful, either for the board of directors of the mother bank, or for the board of directors of any of the aforesaid offices of discount and deposit, to deliver and pay, to any person whatever, the sums loaned or discounted upon mortgages until after said mortgages shall have been duly recorded.

Right to seize on the mortgages, notwithstanding any alienation.

SECTION 31. *And be it further enacted*, That on all mortgages executed under this act the president, directors, and company of the bank shall have the right to seize the property mortgaged, in whatever hand it may be, in the same manner, and with the same facilities, that it could be seized in the hands of the mortgager, notwithstanding any

58[33] sale, or change of the title, or possession thereof, by descent or otherwise.

Wife may bind herself in solido to the bank with the husband.

SECTION 32. *And be it further enacted*, That in all hypothecary contracts, or obligations, entered into by any individual with, or in favor of, the said president, directors, and company of the Bank of Louisiana, according to the true intent and meaning of this act, it shall be lawful for the wife of such individual to bind herself jointly and in solido with him, and in such case the property and rights of the said wife, either dotal or of any other description, shall be affected by said contracts or obligations, provided the said wife be of the age of majority at the time of entering into such contracts or obligations.

Offices not paying a clear profit of six per cent. may be withdrawn.

SECTION 33. *And be it further enacted*, That whenever it shall be found that any of the said offices of discount and deposit, after having received the whole amount allotted to it by the twenty-second section of this act, does not give to the mother bank an annual interest of six per cent. per annum upon its respective capital, the said office may be withdrawn and abolished by the said mother bank.

No respite to affect the bank.

58[34] SECTION 34. *And be it further enacted*, That if any person having obtained a loan from the said bank, secured by a mortgage on immovable property, shall apply for and obtain, judicially or otherwise, a respite from his creditors, the right of the bank to compel payment, by obtaining an order of seizure and sale of the said mortgaged property, shall not be thereby impaired or delayed.

No surrender of property to affect the bank.

SECTION 35. *And be it further enacted*, That if any person having obtained a loan from said bank, secured by mortgage as aforesaid, shall make a surrender of his property to his creditors, the said mortgaged property shall not thereby pass, except upon payment of the debt due to the bank and secured thereon; but it shall be lawful for the said bank to proceed by an order of seizure and sale against the said property, in the same manner as if no surrender had been made, and the surplus only of the proceeds of sale, after paying the debt due to the bank and costs, shall be paid over to the

syndics, assignees, or trustees of the estate of such debtor.

SECTION 36. *And be it further enacted*, That in case of the destruction or loss, by inevitable accident, of any bond or bonds to be issued by the State, in conformity with the provisions of this act, the governor and treasurer of the State, for the time being, are hereby authorized to issue, to the person or persons entitled to receive the same, new bonds in the place of those so lost or destroyed: *Provided*, That the person so entitled shall, before making application for such renewal, give public notice of his intention by advertising in one of the public newspapers printed in New Orleans, and also in some public newspapers printed in the place where the interest on such bond or bonds was payable, for the term of six months next preceding such application, and shall furnish evidence of such destruction or loss, and of the said publication, to the satisfaction of the said governor and treasurer, and shall give bond to the governor in double the amount of such bond or bonds, with security to his satisfaction, with a condition to indemnify the State against the appearance of said bond for the term of two years from the time of such renewal: *And provided also*, That if such bond or bonds, so supposed to be lost or destroyed, shall be produced after the expiration of said two years, that the same shall not be paid, but shall be held to be annulled and rendered void.

58[35] 58[36]

Provision for renewing bonds lost by accident.

SECTION 37. *And be it further enacted*, That nothing contained in this act shall be so construed as to prevent the annual election of president to that office; and to enable him to be so re-elected, it is hereby declared that the third rule of the fifteenth section does not apply to the president in his re-election as director, and that no director except the president shall be eligible for more than three years in four.

No director except the president eligible for more than three years in four.

(Signed) A. B. ROMAN,
Speaker of the House of Representatives.

(Signed) H. S. THIBODEAUX,
President of the Senate.

Approved April 7th, 1824.

(Signed) TH. B. ROBERTSON,
Governor of the State of Louisiana.

58[37] *An act to amend an act entitled "An act to incorporate the subscribers to the Bank of Louisiana.*

SECTION 1. *Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened*, That the payment of the first installment of one-fifth towards constituting the capital stock of the said bank shall be made by the subscribers other than the State of Louisiana in the manner following, to wit: each subscriber shall, at the time of subscribing, pay in cash the sum of five dollars for each and every share by him subscribed, and shall at the same time deliver to the commissioners his promissory note, indorsed to the satisfaction of said commissioners, payable on demand, for the further sum of fifteen dollars for each and every share by him subscribed.

Mode of paying the first installment.

When payment of the notes to be required.

SECTION 2. *And be it further enacted*, That it shall be the duty of the board of directors of said bank to require payment of such notes, as soon as the said bank shall be ready to go into operation.

Notice to be given.

SECTION 3. *And be it further enacted*, That the said directors shall give notice of the day when payment of
58[38] such notes will be demanded, by advertising, for forty days previous to such day, in at least two of the public newspapers printed in New Orleans.

Penalty in case of non-payment.

SECTION 4. *And be it further enacted*, That if any of such notes shall not be paid when duly demanded, the board of directors shall be, and they are hereby, authorized to strike the name of such delinquent subscriber from the subscription book, and, in such case, the said sum of five dollars so paid by him on each share subscribed shall be forfeited to the use of the bank, and the said note or notes cancelled.

Number of commissioners changed.

SECTION 5. *And be it further enacted*, That the number of commissioners to superintend the receiving of subscriptions to the stock of the said bank shall be, in the city of New Orleans, six, instead of five, and that in case of any vacancy occurring in the said board of commissioners, or in any of the boards appointed for the country, after their election, the same may be filled by the governor.

(Signed) DAVID A. RANDALL,
Speaker of the House of Representatives pro tem.

(Signed) H. S. THIBODEAUX,
President of the Senate.

Approved April 10th, 1824.

(Signed) TH. B. ROBERTSON,
Governor of the State of Louisiana.

58[39] *Table showing the number of votes to which stockholders may be entitled.*

Shares.			Votes.	Shares.			Votes.
1	is entitled to		1	42 to	45	is entitled to	20
2			2	46 "	49		21
3			3	50 "	53		22
4 and	5		4	54 "	57		23
6 "	7		5	58 "	61		24
8 "	9		6	62 "	65		25
10 "	11		7	66 "	69		26
12 "	13		8	70 "	73		27
14 "	15		9	74 "	77		28
16 "	17		10	78 "	81		29
18 "	19		11	82 "	85		30
20 "	21		12	86 "	89		31
22 "	23		13	90 "	95		32
24 "	25		14	96 "	101		33
26 "	27		15	102 "	107		34
28 "	29		16	108 "	113		35
30 to	33		17	114 "	119		36
34 "	37		18	120 "	125		37
38 "	41		19	126 "	131		38

Shares.	Votes.	Shares.	Votes.
132 to 137 is entitled to	39	430 to 439 is entitled to	70
138 " 143	40	440 " 449	71
144 " 149	41	450 " 459	72
150 " 159	42	460 " 469	73
160 " 169	43	470 " 479	74
170 " 179	44	480 " 489	75
180 " 189	45	490 " 499	76
190 " 199	46	500 " 509	77
200 " 209	47	510 " 519	78
210 " 219	48	520 " 529	79
220 " 229	49	530 " 539	80
230 " 239	50	540 " 549	81
240 " 249	51	550 " 559	82
250 " 259	52	560 " 569	83
260 " 269	53	570 " 579	84
270 " 279	54	580 " 589	85
280 " 289	55	590 " 599	86
290 " 299	56	600 " 609	87
300 " 309	57	610 " 619	88
310 " 319	58	620 " 629	89
320 " 329	59	630 " 639	90
330 " 339	60	640 " 649	91
340 " 349	61	650 " 659	92
350 " 359	62	660 " 669	93
360 " 369	63	670 " 679	94
370 " 379	64	680 " 689	95
380 " 389	65	690 " 699	96
390 " 399	66	700 " 709	97
400 " 409	67	710 " 719	98
410 " 419	68	720 " 729	99
420 " 429	69	730 and all above	100

58[40] *Directors of the Bank of Louisiana for the year* 1824.

Benjamin Story, president; John Linton, Lucien Labranche, Barthelemy Grima, Martin Gordon, John B. Humphreys, State directors.

Andrew Lockhart, William Brock, Samuel Livermore, Samuel B. Bennett, Samuel W. Oakey, James Hopkins, J. M. Fortier.

Joseph Saul, cashier.

Samuel Livermore, counselor.

Hugh K. Gordon, notary.

58[41] *Proceedings of the subscribers to the Bank of Louisiana, at a meeting held on the 25th day of June,* 1824.—*Published by order of the board of directors.*

At a meeting of the subscribers to the Bank of Louisiana, convened by public notice, this 25th day of June, 1824, at Mr. Harvey Elkin's hotel, Canal street, for the purpose of enacting by-laws, ordinances, and regulations for the government of the said bank:

Felix Arnaud was requested to take the chair and Richard Clague to act as secretary.

Samuel Livermore, on behalf of the president and directors of said bank, presented to the meeting a draft of by-laws and regulations for

their consideration, which, having been read, it was resolved that the sections should be separately submitted for adoption, revision, or correction:

When the following ordinance was agreed to by the meeting, and adopted as the fundamental rules and regulations for the government of the board of directors of the Bank of Louisiana:

58[42] *An ordinance establishing by-laws for the government of the Bank of Louisiana.*

Whereas, by the act to incorporate the subscribers to the Bank of Louisiana, the said subscribers have been created a body politic and corporate, with power to buy, receive, and possess all kinds of property, either movable or immovable, and to loan, negotiate, sell, grant, alien, demise, and dispose of the same, and to take mortgages and pledges, and to buy and sell bills of exchange and checks, and to discount upon banking principles, and to sue and be sued, to have a common seal, and to ordain and establish such by-laws and ordinances as they shall deem expedient for the government of said corporation, not being contrary to said act, nor to the Constitution or laws of the United States or of this State:

Directors to call meetings of the stockholders.

58[43] SECTION 1. *Be it therefore ordained by the President, Directors, and Company of the Bank of Louisiana*, That the board of directors shall have power to call a general meeting of the stockholders at any time they may deem proper, giving thirty days' notice of the time, place, and objects of such meeting in two of the public newspapers printed in the city of New Orleans.

Of the transfer of stock.

SECTION 2. *And be it further ordained*, That the stock of said bank shall be assignable and transferable, according to such rules and regulations as may be made for that purpose by the board of directors.

Power of the board of directors.

SECTION 3. *And be it further ordained*, That the president and directors be, and they are hereby, authorized and directed to take charge of the cash, notes, and other property now belonging, or which may hereafter belong, to the bank; to receive deposits and to pay the same to the legal order of the depositors; to make and issue bills and notes payable to order or to bearer; to cause to be made and to use a seal for the said corporation, and the same to alter and renew at their pleasure; to discount bills, bonds,

58[44] promissory notes, and other negotiable paper; to make loans on mortgages in conformity with the provisions of the act to incorporate the subscribers to the said bank; and generally to do and perform all such other matters, acts, and things as may be necessary for the well conducting and ordering the affairs of the said bank, according to the true intent and meaning of the said act of incorporation.

Of the sale of bonds.

SECTION 4. *And be it further ordained*, That no sale of the bonds for two millions and four hundred thousand dollars, to be received by the bank from the State of Louisiana, shall be made by this bank, unless the same shall be authorized by three-fourths of the whole number of directors, at a meeting called for that purpose.

Judges of elections.

SECTION 5. *And be it further ordained*, That the president and directors shall annually appoint five stockholders, not being directors, to be judges of the election of the directors, a majority of whom to have power to act; and the board of directors shall prescribe the hours of the day for holding such election.

Judges of elections may adjourn, etc.

SECTION 6. *And be it further ordained*, That, in case an election of directors shall not be begun, or being
58[45] begun shall not be completed, on the fourth Monday in January, in any year, the judges of said election shall adjourn the same from day to day, not exceeding three days from the said fourth Monday in January, until the the same shall be completed.

Penalty in case of improper dividends.

SECTION 7. *And be it further ordained*, That in case the board of directors shall at any time make a dividend exceeding the profits of the bank, as the same may appear by the official returns of the cashier of the said bank, and certified by a committee of the board specially appointed for the examination of the semi-annual accounts, and thereby diminish the capital stock, the members assenting thereto shall be liable, as individuals, for the amount of the surplus so divided.

Certificates of election to be sent to cashier, etc.

SECTION 8. *And be it further ordained*, That the said judges shall, immediately after the election of the directors shall have been completed, transmit to the cashier of the bank an authentic certificate of the names of the persons so elected; and the cashier shall thereupon forthwith notify all the directors so elected, and also the directors appointed by the governor and senate of the State of Louisiana, to meet at the banking house, on the first Mon-
58[46] day in February following the said election, at ten o'clock in the forenoon, for the purpose of choosing a president.

Directors authorized to rent or purchase, etc.

SECTION 9. *And be it further ordained*, That the board of directors be, and they are hereby, authorized to rent or purchase for this corporation such immovable property as they may deem it expedient for the corporation to hold: *Provided, however*, That no such purchase shall be made unless the same shall be authorized by the consent of three-fourths of the whole number of directors, at a meeting specially called for that purpose.

Directors to have the power to make all other by-laws, etc.

SECTION 10. *And be it further ordained*, That the president and directors shall have power to make such further by-laws, rules, and regulations as they may deem necessary and expedient for the well ordering and government of the said bank, not contrary to this ordinance, the act creating this corporation, or the Constitution and laws of the United States or of the State of Louisiana; and that all other powers granted to the said corporation, by the said act, be, and the same are hereby, vested in the said board of directors.

FELIX ARNAUD,
Chairman.

RICHARD CLAGUE, *Secretary.*

58[47] *Rules and regulations for conducting the business of the Bank of Louisiana, adopted by the board of directors 30th June*, 1824.

Days and hours of business.

RULE 1. The bank shall be kept open for the transaction of business from nine o'clock a. m. until three o'clock p. m., every day in the year, except Sundays, Christmas, Good Friday, fourth of July, first and eighth of January, and such other days and hours as may be excepted by a special order of the board.

Semi-annual dividends.

RULE 2. The books and accounts of the bank shall be regularly balanced on the fourth Mondays of January and July in each year, when the half-yearly dividends shall be declared and published in at least two of the public newspapers in the city of New Orleans, and shall be payable on or after the first Monday in February, and first Monday in August, to the stockholders or their lawful representatives. The said settlement shall be examined and certified by a committee to be appointed for that purpose.

Deposits.

58[48] RULE 3. The bank shall take charge of the cash of all such persons as shall choose to place it there free of expense, and shall keep it subject to the order of the depositor, payable at sight; and shall also receive special deposits of ingots of gold, bars of silver, wrought plate, and other valuable articles of small bulk, for safe-keeping, at the risk of the depositor.

Rate of coins.

RULE 4. The bank shall receive and pay all specie coins (except Spanish doubloons) according to the rates and value that have been, or shall hereafter be, established by the Congress of the United States.

Discount days.

RULE 5. There shall be two discount days in each week; and all bills and notes offered for discount shall be delivered to the bank the days next preceding the days of discount.

Statement of accounts to be laid before the board.

RULE 6. It shall be the duty of the cashier to lay before the board, at every discount day, a general statement of the accounts of the bank.

Duty of the president.

RULE 7. A seal, with a suitable device, for the use of the bank, shall be established, and the president, with the approbation of the board of directors, shall have

58[49] power to affix the said seal to all conveyances or other necessary instruments, and sign the same on behalf of the corporation; the said seal shall always remain in the custody and safe-keeping of the president, as shall the plates for the banknotes, paper moulds, and bank paper; and it shall further be the duty of the president to observe the conduct of all persons employed in the bank, and sign all bills and notes which may be issued by the corporation, in the banking house and at no other place, unless by special permission of the board.

The board may assign other duties.

RULE 8. The board of directors for the time being shall assign to the president such additional functions as they may from time to time find necessary for the good government of the affairs of the corporation.

Duty of cashier.

RULE 9. It shall be the duty of the cashier to countersign, at the bank, all bills or notes to be signed by the president, or by order of the board; carefully to observe the conduct of all persons employed under him, and report to the board

such instances of neglect, incapacity, or bad conduct as he may discover in any of them; daily to examine the set-
58[50] tlement of the cash accounts of the bank; to take charge of the cash, and, whenever the actual amount materially disagrees with the balance of the cash account, report the same to the president and directors without delay; to attend all meetings of the board; keep a fair and regular record of its proceedings; give such information to the board as may be required; consult with committees, when requested, on subjects referred by the board, and also to perform such other services as may be required of him by the board.

Monthly examination by a committee.

RULE 10. A committee of at least three of the board, in rotation, (the president excepted,) shall monthly visit the vaults in which the cash and other effects shall be deposited; they shall cause an inventory to be made of the same, to be compared with the books, in order to ascertain whether they perfectly agree therewith, and shall report the result of such examination to the first meeting of the board.

Of cancelling notes, etc.

RULE 11. No notes of the bank shall be struck or signed, or bank paper made or purchased, except by a special order of the board, nor shall any of the banknotes be can-
58[51] celled, except by a committee appointed by the board for that purpose, whose duty it shall be to have recorded the amount so cancelled, specifying the particulars as to date, number, and denomination of said notes, and sign the said record with their names, which record shall be laid before the board at their first meeting thereafter; and the notes, when compared with the record and cancelled, shall be enveloped in paper, sealed, endorsed by the committee, and surrendered to the president for safe-keeping.

Cash accounts of individuals not to be examined by a director.

RULE 12. No director, without special authority, shall be permitted to inspect the cash account of any person with this bank.

Certificates of stock to be issued.

RULE 13. There shall be issued to the stockholders certificates for the number of shares which he, she, or they may respectively be proprietors of, and stating the amount paid in, to be signed by the president and cashier.

Transfer book.

RULE 14. All transfers of the stock of this institution shall be made upon a book, to be kept in the bank, to be called the transfer book, and all transfers may be made by the proprietor or his lawful attorney, the certificate of stock to be surrendered at the time the transfer is made.

Of discounts.

58[52] RULE 15. On each application for discount every director who may be present shall be held to give his opinion for or against the same, and no discount shall be made without the consent of three-fourths of the directors present: and all notes and bills discounted shall be entered in a book, to be called the credit book, in such manner as to discover to the board, at one view, on each discount day, the amount which any person is discounter, or is indebted to the bank, either as payer or as endorser.

Overdrafts.

RULE 16. On every discount day the name of every person who shall have overdrawn the bank since the last discount day shall be reported to the board; and in no instance will this bank give a release or discharge to any debtor where the debt arises from an overdraft; and every officer

who shall knowingly suffer an overdraft to be made on the bank, without communicating it to the president or cashier, shall be dismissed from the service of the bank.

Protests.

RULE 17. If any bill or note belonging to this corporation shall not be paid before the shutting of the bank, 58[53] on the last day of grace, such bill or note shall be forthwith protested, and while such bill or note remains unpaid no discount or accommodation shall be granted to any drawer, acceptor, or endorser of the same. Bills and notes deposited for collection, at any time before the commencement of the days of grace, shall be proceeded with as bills and notes discounted, unless the person depositing the same shall otherwise direct in writing: *Provided*, That, in case of non-payment and protest, the person lodging the same shall pay the charges of protest.

Book of signatures.

RULE 18. Every person who opens an account and transacts business with the bank shall subscribe his name in a book to be kept for that purpose, to be called the book of signatures, and all the persons who compose any house keeping an account with this bank shall subscribe their names, and the signature of the firm, in this book, if residing in New Orleans.

No clerk to have an account.

RULE 19. No clerk or servant of this bank shall keep an account therein, but shall receive his salary monthly from the cashier.

Discounted notes charged the payers when they have funds in bank and have neglected to take up the notes.

RULE 20. All notes discounted by the bank shall be charged to the account of the payer payers when 58[54] due, provided there are funds in bank to the credit of such person or persons, and he, she, or they shall neglect to have the same taken up before the shutting of the bank on the last day of grace.

Notes discounted to meet the payment of others not to be applied to another purpose.

RULE 21. All notes discounted to meet the payment of any note or bill due to the bank shall not be drawn for nor applied to any other purpose whatever.

Notes or bills drawn by persons living out of N. Orleans to be payable at a bank in the city.

RULE 22. All bills and notes offered for discount in the Bank of Louisiana, drawn or endorsed by persons living out of the limits of the city of New Orleans, shall be made payable at some bank in the said city.

Of applications for loans on mortgage security.

RULE 23. Persons who may be desirous of obtaining a loan, to be secured by mortgage, shall be required to make their proposals in writing, directed to the president and directors. These proposals must state the amount of the loan asked, and must particularly describe the property to be mortgaged. When the property proposed to be mortgaged consists in a rural estate, the proposals must contain a statement of the number of acres of land actually cleared and cultivated, of the whole number of negroes, and of 58[55] the number employed to work in the field. It must also be stated whether the land is in cultivation of sugar, cotton, or what else; and the number of hogsheads of sugar, bales of cotton, or other produce made on such plantation during each of the four preceding years must also be shown. If the object be a sugar plantation, the number of acres of plants and of rattoons in the ground at the time of the application must be stated. The proposals must also

contain a description of the buildings erected on the land, and must state whether the land is subject to any incumbrances, and, if any, of what nature. Certified copies of all the authentic acts constituting the title of the applicant, with a certificate of the recorder of mortgages, when the land lies in the county of Orleans, and of the judge of the parish where the land is situated, when out of the parish of New Orleans, must be transmitted with this application.

Such applications to be referred to a committee.

RULE 24. Every proposal for loan on mortgage security shall be referred to a committee of two members, whose duty it shall be to obtain satisfactory evidence of the
58[56] real value of the land proposed to be mortgaged, and to report thereon to the board.

Title papers to be submitted to the counsel for the bank.

RULE 25. The title-papers of persons applying for such loans shall be submitted to the counsel of the bank for his examination and report.

Days for deciding on such applications.

RULE 26. Two discount days in each month shall be fixed upon for deciding on all such applications for loans to be secured by mortgage.

Bonds and mortgages to be executed by the wife, jointly with the husband, except, etc.

RULE 27. No loan on mortgage security shall be made to any man having a wife living, unless the bond and mortgage be executed by the wife jointly with her husband, she binding herself in solido with him for the repayment thereof, and postponing her tacit mortgage to that which is given to the bank: *Provided, however*, That this rule may be dispensed with in all cases where the person making application shall prove, to the satisfaction of the board of directors, that no tacit mortgage in favor of his wife exists on the land proposed to be hypothecated.

What shall be contained in the act of mortgage.

RULE 28. All acts of mortgage to be passed in favor of this corporation shall contain an express renuncia-
58[57] tion, by the mortgagor, of the benefit of all laws now in existence, or which may hereafter be enacted, for the appraisement of property seized on execution. Every such mortgage shall contain an express confession of judgment; and the person granting it shall therein consent that, in default of payment according to the terms of the bond and mortgage, the bank may obtain an order of seizure and sale, and that the mortgaged property may be thereon sold by the sheriff, for cash, and without appraisement, to the highest bidder, after an advertisement of at least thirty days in the French and English languages.

Previous nomination of candidates for offices.

RULE 29. In every election to an office, except that of president, by this board, there shall be a previous nomination of the candidates at least one week before the election.

Mode of altering or repealing these rules.

RULE 30. None of the foregoing rules or regulations shall be repealed or altered, unless a majority of all the directors vote for the repeal or alteration, nor unless upon a motion offered for that purpose at a previous meeting of the board.

Rules for governing the deliberations of the board of directors.

RULE 31. The proceedings of the board of directors,
58[58] when conducting their business as a deliberative body, shall be governed by the following articles:

1. When the president takes the chair, the members shall take their seats.

2. The minutes of the preceding meetings shall be read before the board proceeds to any other business, and no

debate shall be admitted nor question taken at such reading, except as to error and inaccuracies. The state of the bank shall then be read and the discounts settled.

3. The president shall be the judge of order, and his decision shall be immediately submitted to, unless two members require an appeal to the board. He shall name all committees, unless herein otherwise provided, or unless the board shall otherwise determine; and he shall call special meetings of the board, whenever, in his opinion, the business may require it, or on the request of three members of the board.

4. Every member presenting a paper to the chair shall first state its general purport, and every member who shall make a motion, or offer a resolution, or speak on any subject under discussion, shall rise and address the president.

58[59] 5. No debate shall be entered into on any motion or resolution until it shall be stated from the chair; and all motions shall, if requested by the president, or by two members, be reduced to writing; and no member shall speak more than twice upon any one question without leave of the board.

6. While a resolution is under consideration, no motion shall be made, except to amend, divide, commit, or postpone it; but it shall be in order at any time, on the call of three members, to take the previous question, which shall be: "Will the board at this time act on this subject?" and, if it shall be decided in the affirmative, the debate may be continued. A motion to adjourn shall always be in order, but shall be decided without debate.

7. A member may call for the division of a question or resolution where the sense will admit of it, but no amendment which tends to destroy the general sense of the clause of a resolution shall be admitted.

8. If business of different kinds shall be called for at the same time by different members, the president will judge and give preference accordingly.

58[60] 9. The yeas and nays shall be taken on any question, if called for by one member, previous to the decision on such question; but no motion for reconsideration shall be permitted unless made and seconded by members who were in the majority on the original question.

10. At the request of any two of the board, the names of the members who make and second a motion shall be entered on the minutes.

Directors and officers of the bank not allowed to disclose confidential affairs.

RULE 32. It shall not be allowed either to the president and directors, or to any of the officers of the bank, to disclose her confidential affairs or the opinions and manner of voting of any of the directors; wherefore every director and officer of the bank, on entering in office, shall be considered as having pledged his honor to observe faithfully this rule, as being implied and understood in the oath which they are required to take by the fourteenth section of the act of incorporation; and it shall be the duty of the president and cashier to give cognizance to this by-law; the one to the members of the board, and the other to the officers of the bank on their respective installations in office.

58[i] At a meeting of the board of directors of the Bank of Louisiana, on the 7th day of July, 1824:

It was resolved, That the bonds of the State of Louisiana, to be received by the bank, shall be endorsed in the following manner:

"The president, directors, and company of the Bank of Louisiana, for value received, do hereby assign the within bond to....., and do bind the capital stock of the said bank for the payment of the principal sum of said bond, according to the tenor thereof, and do engage to pay the half-yearly interest thereon in....., upon the presentation and delivery of the dividend warrants in the margin hereof, the interest to commence from this day.

"Witness the signatures of the president and cashier, and the seal of said bank, this.....day of....., in the year of our Lord eighteen hundred and twenty-four."

59*i* APPENDIX.

Extract from the proceedings of the board of directors of the Bank of Louisiana at their special meeting held 11th February, 1868.

On motion of Mr. A. Hennen, seconded by Mr. A. Lanfear, the following preamble and resolutions were adopted:

Whereas, from the great losses imposed on the bank by the occurences of the last few years, the bank is in a position which makes it impossible for it at this time to discharge its liabilities towards its creditors and stockholders; and

Whereas there are now a considerable number of suits instituted against it by the creditors of the bank; and

Whereas it is proper and right that the directors of the bank should do all in their power to secure a distribution of the assets of the bank equally among all those having claims on the bank, according to their respective ranks and privileges under the law: Therefore,

Be it resolved, That the president is authorized to instruct the counsel of the bank to institute proceedings under the second section of the act approved March 14th, 1842, for a meeting of the stockholders of the bank to deliberate and determine upon the expediency of surrendering its charter, with a view to a liquidatian of the bank, for the common benefit and advantage of the creditors and stockholders of the bank, and in conformity with the provisions of law.

A true copy:

J. F. IRVINE, *Cashier*.

59*ii* In accordance with this resolution, the attorney of the bank filed the following petition on the 24th day of February, 1868:

To the honorable the sixth district court of New Orleans, State of Louisiana:

The petition of The President, Directors, and Company of the Bank of Louisiana respectfully represents that the subscribers to the said bank, their successors and assignees, were created a corporation and body politic by the name and style of "The President, Directors, and Company of the Bank of Louisiana," and so to continue until the 31st day of December, 1870, by an act of the legislature of the State of Louisiana, approved on the 7th day of April, 1824; that the said bank was duly organized under the said act in the said year 1824, and carried on the business of bank-

ing in the State of Louisiana with great success from that time, in strict conformity with the provisions of law, until after the secession of this State from the federal Union, and its entrance into new relations with the so-called "Confederate States" of America, by the action of a convention assembled under the State authority in the month of January, 1861; that, after that event, the said bank, in common with the other banks of the city of New Orleans, was compelled, under the pressure of measures adopted by the "confederate government" at Richmond, and which were enforced by the action of the State authorities then existing, to supend the payment in specie of its notes issued for circulation, and to receive on deposit, and in payment of the debts due to it, the paper money issued by the said "Confederate States government" at Richmond; that the said bank, in company with its sister institutions, yielded with the greatest unwillingness to the necessity imposed on it, is part of the history of the times; that it was not possible for the said bank to protect itself against the effects of payments made to
59*iii* them in confederate notes by their debtors of pre-existing debts; but that its then directors believed it was in their power to protect the said bank against the depreciation of the said confederate currency, which was then foreseen so far as it related to indebtedness incurred to depositors, who made their deposits in that currency after the establishment of the new order of things; that this object was attempted to be attained by the said bank and its sister institutions by stipulating with their customers that they should receive, in payment of the checks drawn against their respective deposits, the same currency in which their deposits were made; that a stipulation was expressly made by the said Bank of Louisiana, from that time, with every depositor, and that petitioners believe these stipulations would have had the effect designed, if the transactions between the bank and its customers had been left under the control of the laws; that, however, those transactions were not so left; that, on or about the last of April, or the first of May, 1862, the city of New Orleans was taken possession of by the military forces of the United States, and the national authority was again established over it and its environs; that at that time the notes of the Bank of Louisiana in circulation amounted to about the sum of $717,517 50, and its indebtedness to its customers who had deposited "confederate notes" in the bank, under the special agreements made between them and the bank as aforesaid, amounted to about the sum of $2,405,350; that the expulsion of the insurrectionary forces and the extension over the city of the power of the national government was necessarily succeded by a great depreciation in the value of the "confederate notes," which constituted the ordinary currency in circulation among the people at the time; that at all times, when there is a great and sudden change in the value of the circulating medium in use among a people, no matter from what cause the change takes place, great loss, suffering, and distress to
59*iv* individuals are inevitable; that this was the case after the occupation of the city in 1862 by the military forces of the United States, but that the "general commanding the Department of the Gulf," not content to leave the evils incident to such a state of things to be corrected by time, saw fit, by the exercise of an arbitrary and irresponsible power, which his command of the armies of the United States enabled him to enforce, to throw the greater part of the loss imposed on the public by the depreciation in the value of "confederate notes" upon the stockholders of the banks of the city, in which a great part of the "confederate notes" had been deposited by the owners for their own convenience under the special contracts entered into by them with the

different banks as aforesaid; and that this was accomplished by General Order No. 30, issued from the headquarters of the Department of the Gulf, dated at New Orleans, May the 19th, 1862, in which the several incorporated banks were prohibited from paying out any more "confederate notes" to their depositors, and were required to pay all depositors in the bills of the bank, United States treasury notes, or gold or silver.

Your petitioners further represent that by this order the bank, which had received under the compulsion previously exerted over them by the insurrectionary authorities the confederate notes belonging to the depositors, was compelled to become the owner of the deposits, and to give their depositors, on demand, gold or silver, United States treasury notes, or their own notes in place of them; that this order had the effect, without the shadow of right, to transfer the loss of the nominal value of the confederate notes from the depositors, who had received them in the course of their business, to the bank itself: that, under the operation of the said order, the Bank of Louisiana was compelled to make an issue of $1,000,000 on the 22d day of May, 1862, and a further issue of $860,000 on the 4th day of June, 1862, to be given to their customers, who had
59v made deposits in confederate notes as aforesaid, and who were not debtors of the bank on notes and bills discounted in exchange for their confederate notes, which said confederate notes were then deprived of all value whatever, by another general order, issued from headquarters of the Department of the Gulf, dated at New Orleans, May the 16th, 1862, prohibiting all circulation of, or trade in, confederate notes or bills after the 27th day of May, 1862, and declaring that all sales or transfer of property made on or after that day, in consideration of said notes or bills, directly or indirectly, "should" be null and void, and the property confiscated to the United States, &c., &c.; and that, by the said issues of its notes made as aforesaid under the said General Order No. 30, the liabilities of the said bank were increased in violation of the rights of the stockholders by the amount of the same, to wit, the sum of $1,860, for which the said bank received no consideration whatever.

Your petitioners further represent that the then agents of the bank, being apprehensive, from the disturbed condition of the city in the month of April, 1862, that its coin was not safe, ordered its removal from the city to what was then considered a place of greater safety; and that the said coin has not since been recovered, notwithstanding the most strenuous exertions have been made for that purpose; that in June, 1863, the said bank was declared insolvent by an order issued by the commander of the Department of the Gulf, and the bank and its assets placed in the possession of commissioners appointed by him, who were directed to put the same in liquidation and to provide specially for the payment of the bill-holders; that the affairs of the said bank continued to be administered by commissioners appointed and subject to the said military authority until January, 1866, when the control of the said bank was restored to the corporators by an order entitled General Order No. 2; that since that time the board of directors appointed by the stockholders have had charge of the same, and have contin-
59vi ued the liquidation of the said bank, and have directed their action to the adoption of such measures as seemed best calculated to secure the withdrawal and taking up of the notes of the bank which had been issued and put into circulation, the holders of which were entitled, under the provisions of article 120 in the constitution of 1852,

and of article 122 in the constitution of 1864, to preference in payment over all other creditors.

Your petitioners further represent that, at the time the said bank was put in liquidation as aforesaid by military authority, the notes of the bank in circulation amounted to $2,577,517, as follows: $717,517 of the old issues, and $1,860,000 of the forced issues under the said military order No. 30; that whilst the said bank was in liquidation under the commissioners acting under military authority, its notes to the amount of $821,948 were taken up and destroyed, and that since the 22d January, 1866, when the bank was restored to the possession of the corporators, notes to the further amount of $746,931 have been taken up and destroyed by petitioners.

Your petitioners further represent that there is now a considerable number of suits instituted and pending against the said bank by its creditors, and that they can no longer carry on the work of liquidation in which they have been engaged without the aid of judicial authority; and that the said Bank of Louisiana, in consequence of the said forced issues of its obligations, made under the said General Order No. 30, by which its liabilities were increased as aforesaid, without any consideration, in the sum of $1,860,000, as aforesaid, and of the said loss of coin, and of the great losses imposed on it by the insolvency of the mass of its debtors, growing out of the calamities which have afflicted the country during the last few years, is in a position which renders it impossible for it at this time to discharge its liabilities towards its creditors and stockholders; and that the board of directors of the said
59*vii* bank, believing it right and proper that they should do all in their power to secure a distribution of the assets of the bank among those having claims against the bank, according to their respective ranks and privileges, at a meeting of the board of directors held on the 11th day of February inst., (a copy of which is herewith filed,) adopted a resolution authorizing the institution of proceedings under the second section of the act approved March 14th, 1842, for a meeting of the stockholders thereof to deliberate and determine on the expediency of surrendering the charter of the said bank, with a view to liquidation of the said bank for the common benefit and advantage of the creditors and stockholders, and in conformity with the provisions of law.

You petitioners further represent that a part of the stockholders reside out of the State.

Wherefore your petitioners pray that this honorable court will order that a meeting of the stockholders of the said Bank of Louisiana shall be held before a notary public for the purpose of deliberating and determining on the expediency of surrendering the charter of the said bank, according to law, on a day to be fixed by the court; that the attorney general of the State be served with a copy of this petition and of the said order, and be notified to represent the absent stockholders and creditors; and that public notice of the time and place of the said meeting be given in French and English twice a week during the delay between the date of the said order and the day fixed for the holding of this said meeting.

Your petitioners further pray for all and general relief.

(Signed) MILES TAYLOR,
Attorney for Petitioners.

It having been found impossible to obtain the necessary attendance of the stockholders to make a voluntary surrender of the charter, the

attorney general, on the first day of May, 1868, filed the following petition for the forfeiture of the charter of the bank:

59*viii* To the honorable the sixth district court of New Orleans:

The petition of the State of Louisiana respectfully represents that the Bank of Louisiana, a corporation and body politic created under the laws of this State, and established in the city of New Orleans in June, 1863, having already previously committed many acts of forfeiture of its charter, and entered into new relations with the so-called Confederate States of America, in violation of the laws and purpose under which it was created, was declared insolvent by an order issued by the commander of the Department of the Gulf, and the said bank and its assets placed in the possession of commissioners appointed by him, who were directed to put the same in liquidation and to provide specially for the payment of the bill-holders; that the affairs of the said bank continued to be administered by commissioners appointed, and subjected to the said military authority until January, 1866, when the control of the said bank was restored to the corporators by order of the said military authority; that since that time the said board of directors appointed by the stockholders have had charge of the same, and have unsuccessfully continued the liquidation of said bank until the said bank has become involved in a considerable number of suits instituted and still pending against said bank by its creditors, and that the said directors can actually no longer carry on the work of liquidation in which they have been engaged, as they have solemnly declared it by a resolution passed at one of their special meetings, held on the 11th day of February, 1868, in which they have authorized the president of said bank to instruct the counsel of the bank to institute proceedings under the act of March 14th, 1842, for a meeting of the stockholders of the bank to be convoked to deliberate and determine upon the expediency of surrendering the charter of the bank, with a view to a liquidation of the said bank for the common benefit and advantage of the creditors of the said bank in conformity with the provisions of law, as it
59*ix* appears by said resolution and application of said bank, filed in this honorable court under the number 21737 of the docket of the court hereto annexed for reference, and to be made part of this petition; that, in consequence of said resolution and application, a meeting of the stockholders of the bank was held by order of this court, on the 23d of April, 1868, at the banking house of said bank, in this city, for the aforesaid purpose; that the said meeting was only attended by few stockholders, who have injudiciously postponed this matter of great expediency at a period of time which would be detrimental and injurious to the bill-holders, depositors, and other creditors of the bank, if proper measures and remedy should not be immediately taken to protect the said creditors in permitting to some creditors of the bank to proceed in obtaining and executing judgments against the property of the bank, in violation of the law which confers a right to the bill-holders of the bank to be paid by preference to other creditors of the bank; that at the said meeting held on the 23d April, 1868, as aforesaid, the State of Louisiana, by the ministry of the attorney general of the State, has reserved to herself the right to demand the forfeiture of the charter of said bank, to be declared before a competent tribunal of the State, and judicial liquidation of the affairs, to be enforced after the dissolution of said corporation, in order to prevent creditors to obtain an unjust preference over those who are to be protected by the law.

Petitioners further represent that the urgency to put the bank in

forced liquidation under the aforesaid law is so pressing that the property of said bank is already seized and advertised for sale by the sheriff of the parish of Orleans, in order to give a preference to creditors who are not entitled to it by law, but who would acquire the same if the others were not protected.

Wherefore, under these circumstances, and the premises being
59x considered, your petitioner prays that the said Bank of Louisiana, through its president, be cited to appear and answer this petition; that the said bank be ruled to show cause in ten days after the service of this petition why its charter should not be decreed to be forfeited, the corporation dissolved, and liquidators and commissioners appointed according to law to settle and wind up the affairs of said bank according to law; and, on its failing to show good cause, that judgment be entered decreeing the forfeiture of said charter, the dissolution of said corporation, and its liquidation according to law, with costs. And your petitioner prays that, during the pendency of these proceedings for the forfeiture of the charter of said bank, all legal proceedings on behalf of individual creditors against said bank be stayed; that an injunction do issue prohibiting the president of said bank from paying any funds, disposing of or assigning any assets or property of said bank, until further order of the court; and that the sheriff of the parish of Orleans, and the clerks of the district courts of New Orleans be notified thereof. And petitioner prays for general relief.

(Signed) B. L. LYNCH,
Attorney General for the State of Louisiana.

No answer to this petition was filed by the officers of the bank. The only action taken by them in reference thereto is shown by the following extract from the minutes of the proceedings of the board of directors of the Bank of Louisiana, at their meeting of Monday, 11th May, 1868:

"The president reported that he had been served with an injunction, and a citation and copy of petition from the sixth district court, in a suit instituted by the attorney general for a forfeiture of the charter of the bank.

"Whereupon it was—

"*Resolved*, That the cashier be authorized to inform the attorney general that no answer will be made in the said cause, and that
59xi the court will decide the questions raised upon the facts put in proof on the part of the State.

"A true copy:

"J. F. IRVINE, *Cashier*."

Upon these proceedings a judgment was finally rendered against the bank, of which the following is a copy:

Judgment.

In this case, for the reasons assigned in the written opinion of the court this day delivered and filed,

It is ordered and decreed that the charter of the Bank of Louisiana, an incorporated institution and body politic under the laws of this State, be declared forfeited, null, and void; that the said corporation be dissolved; and that its affairs be liquidated according to law.

It is further ordered that all judicial proceedings against said bank be stayed; that notice hereof be published once a week in two news-

papers of this city, in French and in English, during one month; that a board of three commissioners be organized for the purposes of the liquidation of its affairs; and that Charles Eugene Willoz be appointed one of the above three commissioners.

Judgment rendered 20th May, 1868.

Signed 22d May.

G. DUPLANTIER, *Judge.*

Under this judgment commissioners were appointed and qualified, who assumed immediately the administration of the property and assets of the bank which came into their possession by virtue of law and the judgment of the court, and proceeded to liquidate the affairs of the bank according to the laws of the State, until their proceedings were arrested by the filing of the following petition in the bankrupt court, on the 20th May, 1869:

59*xii* To the Honorable E. H. Durell, judge of the district court of the United States for the district of Louisiana:

The petition of John Thornhill, George L. Thompson, and Isidore Newman, all of whom reside in New Orleans, in the parish of Orleans, and State of Louisiana, except the said Thompson, who resides in Schenectady, in the State of New York, respectfully shows; that the said Thornhill is a creditor of the Bank of Louisiana, and of P. H. Morgan, Charles E. Willoz, and John F. Irvine, the acting commissioners of the said bank in liquidation, which said bank and commissioners had their domicil and place of business in the city of New Orleans for twelve months next preceding the date of the filing of this petition; that your petitioners' demand is provable against the said Bank of Louisiana, and against the said commissioners, in accordance with the provisions of the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United" States, approved March 2, 1867; that he and his co-petitioners believe and allege that the said bank and the said commissioners owe, each of them, debts to an amount exceeding the sum of three hundred dollars; that your petitioner's (Thornhill) demand exceeds the amount of two hundred and fifty dollars, and that the nature of the said demand is as follows, to wit, a certificate of forty shares of stock of the said bank of the value of four thousand dollars, on each share of which one hundred dollars have been paid, that being the amount and nominal value of each share of said stock, which shares are owned by said Thornhill; that the said George L. Thompson is a creditor of the said bank and of the said commissioners for the sum of three hundred dollars; that the said demand is provable under the aforesaid act of Congress, and that the nature of said demand is as follows, to wit, three promissory notes of the said bank, for one hundred dollars each, payable on de-

59*xiii* mand to bearer, which notes are held and owned by said Thompson, and which the said commissioners and the said bank have refused to pay on demand; that Isidore Newman is a creditor of the said bank and of the said commissioners for the sum of two hundred and eighty-five dollars; that this demand is provable under act of Congress aforesaid, and that the nature of said demand is as follows, to wit, notes of the said Bank of Louisiana, payable on demand to bearer, to the amount of two hundred and eighty-five dollars, which notes are held and owned by said Newman, and payment of which has been demanded by said bank and the said commissioners, and been refused.

And your petitioners further represent that, within the six calendar

months next preceding the date of this petition, the said coporation, the Bank of Louisiana, being a banker, and the said commissioners, did, each of them, commit an act of bankruptcy, within the meaning of said act, in this:

That the said corporation and its agents and commissioners did, on the 1st day of February, 1869, and on the 19th day of May, 1869, and on the 1st day of April, 1869, and continuously since those dates, suspend payment of its commercial paper, and has not within fourteen days from said dates resumed payment of the same.

2. That the said bank being bankrupt and insolvent, and its affairs being administered by P. H. Morgan, Charles E. Willoz, and John F. Irvine, under color of a judgment, and appointed by the sixth district court of New Orleans, rendered and made in the suit No. 21914 of the docket of the said court, did transfer to M. A. Becknell and L. Becknell, as petitioners are informed, a promissory note made and endorsed by them for the sum of $20,345 80, which was due, payable, and exigible in current money of the United States, and did receive therefor from the said Becknells notes of the said Bank of Louisiana which were not worth fifty per cent. of the value of the said note; and that the said transfer was made with the intent to defeat, and did defeat and
59*xiv* delay, the operation of the said act of Congress aforesaid to establish a uniform system of bankruptcy.

3. That the said M. A. & L. Becknell were, on and since the sixth day of March, 1869, creditors, as petitioners are informed, of the said insolvent corporation, the Bank of Louisiana, to the amount of $20,345 80, as holders of its notes; and that the said bank and its commissioners did, since the date aforesaid, pay the same, by giving in payment certain assets of the said bank, with the intent thereby to give a preference to the said creditors, and to defeat and delay the operation of the act of Congress aforesaid, the said corporation being at the dates aforesaid insolvent and bankrupt.

4. That the said bank and the said commissioners, its agents, have, since the 9th day of April, 1869, transferred assets of the said corporation, under a pretended authority derived from the said sixth district court of the parish of Orleans, to wit, a note of A. J. Paxton for $7,500, receiving therefor the sum of $750, the said Paxton being solvent; and that the said transfer of said note was made with intent to defeat and delay the operation of the said bankrupt law of the United States.

5. That the said bank, its agents, and commissioners, have, at divers dates within the next preceding six months, and since the first day of February last past, as petitioners are informed, made payments to several persons, whose names are unknown to petitioners, with the intent thereby to give a preference to said persons, creditors of said bank, and to defeat and delay the operation of the said bankrupt act.

6. That the said Morgan, Willoz, and Irvine, acting as commissioners of the said bank, and who are in charge of all its assets, are proceeding to liquidate the affairs of the said bank under a pretended authority derived from the said sixth district court; that within the past six months they have paid out of the assets of the bank salaries of
59*xv* commissioners and clerks and office rent, as petitioners are informed; and all said payments, and each and every act of administration of the affairs of the said corporation by the said Morgan, Willoz, and Irvine, with the assent, as petitioners allege them to be, of the said bank, were made with the intent to defeat and delay, and do defeat and delay, the operation of the said bankrupt act, and do give the ad-

ministration of the affairs of the said insolvent corporation to the State court, and the commissioners apppointed by said court, when, within the intent and meaning of the said bankrupt law, this honorable court has the sole and exclusive jurisdiction of the said insolvent corporation and of the administration of its affairs.

Your petitioners file herewith the said certificate of stock and the said notes, and make the same part of this petition.

Wherefore your petitioners pray that the said Bank of Louisiana and the said commissioners, P. H. Morgan, Cha's E. Willoz, and John F. Irvine, in their capacity of commissioners as aforesaid, may be declared bankrupt, and that a warrant may be issued to take possession of the estate of said corporation in the hands of said commissioners, and that the same may be distributed according to law, and that such further proceedings may be had therein as the law prescribes in such cases.

(Signed) JOHN THORNHILL.
" GEO. L. THOMPSON.
" ISIDORE NEWMAN.

THO'S HUNTON, *Attorney.*

Affidavits.

In the district court of the United States for the district of Louisiana.

In the matter of the Bank of Louisiana, and P. H. Morgan, C. E. Willoz, and John F. Irvine, commissioners.—In bankruptcy.—At New Orleans, in said district, on the 20th day of May, 1869, before me, one of the registers of said court in bankruptcy.

59*xvi* DISTRICT OF LOUISIANA, *ss:*

John Thornhill and George L. Thompson, being duly sworn and examined, upon oath say that the acts of bankruptcy enumerated and set forth in the petition herein have been committed by the said Bank of Louisiana and the said commissioners.

On the 20th day of May, A. D. 1869, appeared personally John Thornhill and George L. Thompson, the above-named witnesses, and were duly sworn to the truth of the foregoing statement.

(Signed) JOHN F. DEANE,
Register in Bankruptcy.

In the district court of the United States for the district of Louisiana.

In the matter of the Bank of Louisiana, and P. H. Morgan, C. E. Willoz, and J. F. Irvine, commissioners, against whom a petition for adjudication of bankruptcy was filed on the 20th day of May, A. D. 1869.—At New Orleans, in said district, the 20th day of May. A. D. 1869, before me, one of the registers of said court in bankruptcy.

DISTRICT OF LOUISIANA, *ss:*

John Thornhill and Isidore Newman, of New Orleans, and George L. Thompson, of New York, being duly sworn and examined at the time and place above mentioned, upon their several oaths say as follows:

That the said Bank of Louisiana, and P. H. Morgan, C. E. Willoz, and John F. Irvine, the commissioners thereof, under order of court were, on and before the 20th day of May, A. D. 1869, and still are, justly and truly indebted unto this deponent, John Thornhill, in the sum of four thousand dollars for forty shares of stock of the said bank held by him, upon which the full amount of four thousand dollars has been paid.

And that the said Bank of Louisiana, and Charles E. Willoz, P. H. Morgan, and John F. Irvine, acting as agents and commissioners
59xvii thereof, were, on and before the 20th day of May, A. D. 1869, and still are, justly and truly indebted unto this deponent, George L. Thompson, in the sum of three hundred dollars for promissory notes or banknotes issued by the said bank, held and owned by this deponent, and which are particularly described and set forth in said notes annexed to the petition herein.

And that the said Bank of Louisiana, and P. H. Morgan, Charles E. Willoz, and John F. Irvine, acting agents and commissioners thereof, were, on and before the 20th day of May, A. D. 1869, and still are, justly and truly indebted to this deponent, Isidore Newman, in the sum of two hundred and eighty-five dollars for promissory notes or banknotes issued by the said bank, held and owned by this deponent, Isidore Newman, and which are particularly described and set forth in said notes filed with the petition herein.

(Signed) JOHN THORNHILL.
" GEO. L. THOMPSON.
" ISIDORE NEWMAN.

On this 20th day of May, A. D. 1869, before me, personally appeared John Thornhill, George L. Thompson, and Isidore Newman, the above-named petitioning creditors, and were duly sworn to the truth of the foregoing statement.

(Signed) JOHN F. DEANE,
Register in Bankruptcy.

Order.

Upon filing proofs sustaining the allegations of the petition aforesaid, it is ordered that P. H. Morgan, Charles E. Willoz, and John F. Irvine, the acting commissioners of said Bank of Louisiana, do appear at this court, as a court of bankruptcy, to be holden at New Orleans, in the parish of Orleans, and State of Louisiana, and district aforesaid, on the
15th day of June, 1869, at 11 o'clock a. m., and show cause, if
59xviii any there be, why the prayer of said petition should not be granted. And it is further ordered that a copy of said petition, together with a copy of this order, be served on said commissioners by delivering the same to them personally, or by leaving the same at their last usual place of abode in said district, at least five days previous to the day herein required for their appearance.

New Orleans, May 20, 1869.

(Signed) E. H. DURELL, *Judge.*

Copies of the foregoing petition and order were received by the marshal on the 4th day of June, 1869, and service was made on one of the commissioners the same day, and on the other two the day following.

On the 4th day of June the following amended petition was filed:

No. 1056.—In the district court of the United States for the district of Louisiana.

In the matter of the Bank of Louisiana, against whom a petition for adjudication of bankruptcy has been filed.

To the Honorable E. H. Durell, judge of the district court of the United States for the district of Louisiana:

This supplemental and amended petition of Jno. Thornhill, George

L. Thompson, and Isidore Newman, petitioning creditors, respectfully shows that, in the original petition filed herein, it is alleged that payment had been made by P. H. Morgan, C. E. Willoz, and John F. Irvine, acting as agents and commissioners of the Bank of Louisiana, to divers persons unknown to petitioners, with the intent to defeat and delay the operation of the bankrupt law of the United States, and that such payments were made within six calendar months next preceding the filing of the petition.

Petitioners now aver that the said acting agents and commissioners are representing the Bank of Louisiana, and administering its assets, with the assent of L. F. Generes, esq., the last president, and
59*xix* the last board of directors of said bank; that the said president and directors suffered, without objection, a judgment to be rendered against said bank, by virtue whereof, and subsequent proceedings had in the suit No. 21914 of the docket of the late sixth district court of New Orleans, the assets, control, and management of the said bank were transferred to the said acting agents and commissioners. And petitioners aver that the said bank, a corporation under the laws of Louisiana, suffered its property to be taken under said legal process, with the intent thereby to defeat and delay the operation of the bankrupt law of the United States, approved March 2d, 1867.

And your petitioners aver that within six calendar months next preceding the date and filing of the original petition, and of this amended petition, the said Bank of Lousiana and the said acting agents and commissioners did, at New Orleans, in the district aforesaid, on the dates hereinafter mentioned, make the following payments in money, to wit:

1. On the 22d day of December, A. D. 1869, they paid to DeBlance & Perry, whose residence is unknown to petitioners, the sum of $300.

2. On the 8th day of January, A. D. 1869, they paid to B. L. Lynch, esq., of New Orleans, in the district aforesaid, the sum of $500.

3. On the 28th day of January, 1869, they paid to Miles Taylor, esq., of the city of New Orleans, and district aforesaid, $150.

4. On the 11th day of March, 1869, they paid to B. F. Deblieux, whose residence is unknown to petitioners, the sum of $150.

5. On the 19th day of March, A. D. 1869, they paid to DeBlanc & Perry, whose residence is unknown to petitioners, the sum of $795 30.

Petitioners aver that at the dates of the said several payments the said bank and the said agents and commissioners, in their capacity as such, were insolvent, and that each and all of said payments
59*xx* were made with the intent to give a preference to the said creditors respectively, and with the intent to defeat and delay the operation of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867.

Petitioners aver that the said Bank of Louisiana committed all the acts of bankruptcy alleged in the original and this amended petition.

And they further show that this amendment is made in order to give notice of specific acts of bankruptcy, and payments alleged in general terms in the original petition.

(Signed) THOMAS HUNTON, *Attorney*,
" GEO. L. THOMPSON,
By THO'S HUNTON, *Att'y*.
" ISIDORE NEWMAN.
" JOHN THORNHILL.

Let this supplemental and amended petition be filed and notified to the parties.

June 4, 1869.

(Signed) E. H. DURELL, *Judge.*

UNITED STATES OF AMERICA, *District of Louisiana:*

I, John Thornhill, the petitioner above named, do hereby make solemn oath that the statements contained in the foregoing petition subscribed by me are true, so far as the same are stated of my own knowledge, and that those matters which are stated therein on information and belief are true, according to the best of my information, knowledge, and belief.

(Signed) JOHN THORNHILL.

Subscribed and sworn to before me this 3d day of June, A. D. 1869.

(Signed) K. LOEY, *U. S. Com'r.*

59*xxi* On the 4th day of June, 1869, the following order was issued by the deputy clerk of the court:

Order to show cause upon creditors' petition.

In the district court of the United States for the district of Louisiana.

In the matter of the Bank of Louisiana, against which a petition for adjudication of bankruptcy was filed on the 20th day of May, A. D. 1869, by John Thornhill and others.

DISTRICT OF LOUISIANA, *ss:*

Upon filing proofs sustaining the allegations of the petition aforesaid, it is ordered that P. H. Morgan, Charles E. Willoz, and John F. Irvine, the acting commissioners of said Bank of Louisiana, do appear at this court as a court of bankruptcy, to be holden at New Orleans, in the parish of Orleans, and State and district aforesaid, on the 15th day of June, 1869, at 11 o'clock a. m., and show cause, if any there be, why the prayer of said petition should not be granted. And it is further ordered that a copy of said petition, together with a copy of this order and supplemental petition, be served on said commissioners, and L. F. Generes, late president, by delivering the same to them personally, or by leaving the same at their last usual place of abode in said district, at least five days previous to the day herein required for their appearance.

Witness the Honorable Edward H. Durell, judge of the said court, and the seal thereof, at New Orleans, in said district, on the 4th day of June, A. D. 1860.

(Signed) K. LOEY, *D'y Clerk.*

The above order was received by the marshal on the 7th and served on the 8th day of June, 1869, on L. F. Generes only.

No order of court was rendered, nor is there any entry on the minutes authorizing the issuing of this order by the clerk.

The cause came up for a hearing on the 15th June, when the following exceptions were filed by the commissioners:

59*xxii* U. S. district court for the district of Louisiana—In bankruptcy.—No. 1056.

In the matter of the petition of John Thornhill, G. L. Thompson, and Isidore Newman vs. P. H. Morgan, C. E. Willoz and John F. Irvine, commissioners of the Bank of Louisiana, and the Bank of Louisiana.

Now come Philip H. Morgan, Charles E. Willoz, and John F. Irvine,

in their capacities of commissioners of the Bank of Louisiana, and respectfully except to the petition and supplemental petition filed herein by plaintiffs, and to the right of the said petitioners to proceed against them as commissioners of the Bank of Louisiana, or as representing said bank in any other capacity, or against the said bank itself, and they also except to the order of court rendered herein, requiring them to file in court, on or before the 12th June, the statements mentioned in the same order, upon the following grounds, to wit:

1. That neither the original nor amended petition shows any cause of action against these exceptors, nor any legal cause or grounds for adjudging them, or the said Bank of Louisiana, bankrupt under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, nor that they are in any way amenable to said act.

2. They except to the said supplemental and amended petition, filed by petitioners on the fourth day of June, 1869, on the ground that it is not verified by the oaths of all the petitioners, and that the petitioner John Thornhill, who alone has sworn to it, is not alleged to be, and is not in fact, such a creditor as is authorized by law to institute this proceeding in bankruptcy against them.

These exceptors deny that they have any legal right or authority to stand in judgment in this proceeding for the said bank, the corporation heretofore existing in this State, known as the Bank of Louisi-
59*xxiii* ana, having been dissolved, and the charter of said bank forfeited by a judgment rendered by a late district court of New Orleans, on the 20th May, 1868, and these exceptors having been subsequently appointed and qualified as commissioners under the laws of this State, solely for the purpose of liquidating the affairs of said defunct corporation.

4. That the said corporation cannot be proceeded against to be adjudged bankrupt, the said corporation not being in existence, having been dissolved as above stated; that the aforesaid act of Congress does not apply to corporations which have no existence and which are incapable of petitioning voluntarily to be adjudged bankrupt.

5. That said bank cannot be proceeded against to be adjudged bankrupt without citing, to show cause, the president, directors, and stockholders thereof.

6. They except to said order on the grounds that petitioners have no right to require the statements mentioned therein to be furnished until they have first duly proved their claims, which they have not yet done.

Wherefore these exceptors pray that they be dispensed with furnishing said statements, and that the said order be rescinded, and that they be also dispensed with answering the said petitions, and that the same be dismissed at the cost of petitioners.

(Signed) WILLIAM H. HUNT,
" CHARVET & DUPLANTIER,
" COOLEY & PHILLIPS,
Attorneys for Exceptors.

The court, considering the exceptions as an answer, ordered the case to be proceeded with for trial on the merits, reserving to the commissioners the right to file an answer setting forth more fully their grounds of defence.

First petition for injunction, filed June 17, 1869.

To the honorable judge of the district court of the United States for the district of Louisiana:

59*xxiv* The petition of John Thornhill and others, petitioning creditors, respectfully shows that they are informed that an application has been made to the honorable sixth district court of New Orleans to obtain an order of sale of the assets of the Bank of Louisiana, which application is still pending.

Your petitioners show that such a sale and disposition of said assets would defeat the operation of the bankrupt law herein.

Wherefore they pray that your honor will issue an injunction restraining and enjoining P. H. Morgan, Charles E. Willoz, and John F. Irvine, individually and as acting commissioners of said bank, from making any transfer or disposition of any part of the assets of said bank now in their possession or under their control as commissioners of the Bank of Louisiana, or any payment out of said assets, during the pendency of these proceedings.

(Signed) THO'S HUNTON, *Attorney.*

Let the writ of injunction issue as prayed for. June 17, 1869.

(Signed) E. H. DURELL, *Judge.*

The President of the United States to P. H. Morgan, Cha's E. Willoz, and John F. Irvine, individually and as acting commissioners of the Bank of Louisiana, greeting:

You and each of you, individually and as acting commissioners of the Bank of Louisiana, are hereby commanded, in the name of the President of the United States and of the United States district court for the district of Louisiana, sitting in bankruptcy, to refrain and desist from making any transfer or disposition of any part of the assets of said Bank of Louisiana now in your possession or under your control as commissioners of said Bank of Louisiana, or any payments out of said assets, during the pendency of these proceedings, and you are so enjoined until the further order of this court.

Witness the Hon. E. H. Durell, judge of our said court, at New Orleans, this 17th day of June, A. D. 1869.

(Signed) CHA'S CLAIBORNE, *Clerk.*

59*xxv* The case was continued over to the 21st, when the following answer was filed:

United States district court, in bankruptcy.

JOHN THORNHILL AND OTHERS *vs.* THE BANK OF LOUISIANA. } No. 1056.

Now come Philip Hicky Morgan, Charles E. Willoz, and John F. Irvine, in their capacities of commissioners of the Bank of Louisiana, and, for answer to the petition and supplemental petition herein filed by petitioners, say they deny that they have committed any of the acts of bankruptcy set forth in said petitions, and aver that they should not be declared bankrupt for any cause in said petition alleged.

Further answering, they adopt all the allegations contained in the exception herein filed by them on the 15th day of June, 1869, and pray

that said exceptions and the grounds thereof, as set forth therein, be taken and considered as part of this answer.

Respondents allege that, in their capacity of commissioners, they have faithfully complied with the provisions of the laws of this State under which they were appointed, and have done no act but what was required of them by said laws and the oath which they have taken; but that all they have done as commissioners has been for the best interests of the creditors and stockholders of said bank, and under the sanction and direction of the sixth district court for the parish of Orleans, to the jurisdiction of which court respondents, as commissioners, are amenable.

Respondents expressly deny that petitioners are such creditors as are authorized by the act of Congress approved March 2d, 1867, to institute these proceedings.

They allege that the notes filed by the petitioners Thompson and Newman are not commercial paper, nor such as is referred to in section 39 of said act of Congress.

Represents that on the 16th day of September, 1861, the said late Bank of Louisiana suspended payment in specie of the circulation and banknotes issued by them, and also suspended payment in specie of all the obligations issued by said bank, and substituted therefor the currency then in circulation in this State, to wit, confederate treasury notes, which were paid out by said bank, as well as all the other banks in New Orleans, in discharge of their obligations, until the 19th day of May, 1862, when an order was issued by Major General Butler, commanding the Department of the Gulf, "that the several incorporated banks pay out no more confederate notes to their depositors or creditors, but that all deposits be paid in the bills of the bank, United States treasury notes, gold, or silver."

59*xxvi*

Your respondents further represent that, at the time of said suspension of specie payment by said bank, to wit, on the 16th day of September, 1861, there was in the vaults of said bank several millions of dollars in specie, and more than sufficient to pay all obligations and liabilities of the bank, all of which was removed therefrom by the directors and officers of the bank, of whom the petitioner John Thornhill was one, on or about the day of , and before the aforesaid general order was issued by General Butler; and that said bank, having on hand no United States currency, nor any means of procuring the same, and being indebted to depositors for a large amount, was compelled by the said order to issue its own notes to such depositors as required them, in lieu of and to represent the amount of their respective deposits; and that among the notes so issued were those filed herein by petitioners Thompson and Newman; the said notes were not issued, nor were they intended, as currency or as part of the circulation of the bank, nor was it expected or contemplated by the parties that they would be redeemed on presentation.

That suits have been instituted in the courts of this State by your respondents in their said capacities against the said John Thornhill and the other directors of said bank for the recovery of the assets of the bank, or their value, which suits are still pending.

59*xxvii*

Respondents aver that no payment, sale, or transfer of any property, rights, money, or credits of said bank has been made by them since their appointment as aforesaid, with the intent to give any preference to any creditor or creditors of said bank, or to defeat or delay the

operation of said act of Congress, nor was any act whatever been done by them with such intent or for such purpose.

Wherefore your respondents pray that the said petition and amended petition filed herein be dismissed at the cost of petitioners.

(Signed) P. H. MORGAN.
" C. E. WILLOZ.
" J. F. IRVINE.

We, the defendants above named, do hereby make solemn oath that the statements and averments contained in the foregoing answer are true so far as the same are stated of our own knowledge, and that other matters, which are stated therein on information and belief, are true according to the best of our knowledge, information, and belief.

P. H. MORGAN.
C. E. WILLOZ.
J. F. IRVINE.

Sworn to and subscribed before me this 21st day of June, 1869.

CHA'S CLAIBORNE,
U. S. Commissioner.

The case was tried and submitted on the 21st of June.

On the 1st of July a petition was filed for a second injunction, as follows:

59*xviii* To the Hon. E. H. Durell, judge of the district court of the United States for the district of Louisiana, sitting in bankruptcy:

The petition of John Thornhill et als., petitioning creditors, respectfully shows that, in order to preserve all the assets and claims of the Bank of Louisiana in their present condition during the pendency of these proceedings, it is necessary that this honorable court should issue an additional restraining order.

Wherefore petitioners pray this honorable court for an injunction restraining P. H. Morgan, C. E. Willoz, and John F. Irvine, acting commissioners of the said bank, from all litigation with reference to the rights or assets of the said Bank of Louisiana, and from making any compromise touching the rights or assets of the said bank, and from any interference with the property or assets of the said Bank of Louisiana, otherwise than to hold the same as they now stand, subject to the further order of the court herein, and that all other persons be enjoined and restrained from any interference with the assets or property of the said bank during the pendency of these proceedings. And your petitioners pray for all necessary and proper orders in the premises.

(Signed) THO'S HUNTON,
Attorney for Petitioning Creditors.

Writ of injunction allowed as prayed for, except that the same is not to affect the payment of the proper salaries of said commissioners and their employees. July 1, 1869.

(Signed) E. H. DURELL, *Judge.*

The President of the United States to P. H. Morgan, C. E. Willoz, and John F. Irvine, acting commissioners of the Bank of Louisiana, greeting:

You, and each of you, are hereby enjoined and restrained, in the

name of the United States of America and of the district court
59xxix of the United States for the district of Louisiana, from all litigation with reference to the rights or assets of said bank, and from making any compromise touching the rights or assets of said bank, and from interfering with the property or assets of the said Bank of Louisiana, otherwise than to hold the same as they now stand, subject to the further order of the court in the premises.

It is further ordered that this injunction shall in no manner affect the payment of the proper salaries of said commissioners and their employees.

Witness the Honorable E. H. Durell, judge of said court, at New Orleans, this 1st day of July, 1869.

(Signed) K. LARY, *D'y Clerk.*

60 *Statement of facts in Mrs. Williams' case, filed nunc pro tunc as of 31 January, 1870.—Filed March 7th, 1870.*

U. S. circuit court, 5th circuit, dis't of La.

JOHN THORNHILL ET ALS. & MRS. SARAH Williams
vs.
BANK OF LOUISIANA. } No. 6056.

Upon petition of Morgan, Willoz, & Bezon.

As regards Mrs. Williams and said petitioners, subject to all exceptions as to the competencis of the facts admitted, as if said facts were adduced in the ordinary course of taking testimony, and not admitting said fact except as they may be determined to be relevant and competent as testimony, and to save time and expenses, the parties have agreed to the following statement of facts:

The Bank of Louisiana was chartered April 7th, 1824; a copy of said charter and amendments is annexed as part hereof, marked "A A."

The bank commenced business immediately, and transacted the usual business of a bank as allowed by said charter. It issued a large amount of what are commonly denominated banknotes, payable to bearer,
61 and redeemable on demand, and designed to circulate as money.

On the 17th September, 1861, it suspended specie payment in common with most of the banks of New Orleans, and has not resumed. A large amount of said banknotes is now outstanding.

That one John Henry obtained a judgment against said bank in the third district court of New Orleans on the 2d of March, 1868, for the sum of $7,816 50, for money deposited in said bank, and five per cent. per annum interest thereon from the 24th April, 1862; issued a fieri facias upon said judgment and thereunder seized property of said bank.

That proceedings were taken in the sixth district court of New Orleans, a court of general jurisdiction, by the attorney general against said bank, in the case of the State of Louisiana vs. the Bank of Louisiana, the record of which is to be produced, and forms a part of this statement, and is marked "B B."

That the petitioners or their predecessors obtained possession of all the property in the bank, and the said petitioners now retain the same, except as they have paid out portions of the funds.

62 That the document annexed and made part of this statement of facts, marked "C C," is a correct statement of the payments

made by the petitioners which are alleged in the petition of Mrs. Sarah Williams.

That Mrs. Sarah Williams is a creditor of the bank, as stated in her petition.

That the document marked "D D" is a transcript of the proceedings in the case of Mrs. Williams vs. Bank of Louisiana.

That Louis F. Generes was the president of the Bank of Louisiana on the 1st of May, 1868, and since that time no new election has been held by the stockholders of directors, or by the directors of officers of said bank.

That the salaries of petitioners has been fixed at three thousand dollars each per annum by the court.

That there is now in hands of petitioners a sum exceeding nine thousand dollars in cash, and other assets to the bank exceeding in value one hundred thousand dollars.

That on the 17th September, 1861, the bank of Louisiana suspended specie payment in common with most of the banks of New Or-
63 leans, from causes beyond its control, and not implying insolvency.

That the petitioners are prosecuting suits, representing themselves as commissioners, against sundry parties, former directors of the bank, which are contested for a sum exceeding three millions of dollars, upon alleged maladministration.

That a bill is pending in the legislature of Louisiana for the relief of the Bank of Louisiana among others, a copy of which is annexed, marked "E E," and that the Bank of Louisiana holds seven hundred thousand dollars of the bonds alluded to in said bill.

(Signed) CLARK, BAYNE & RENSHAW,
" COOLEY & PHILLIPS,
For Petitioners for Review.

For document "A A" see page 56.

Document marked "B B," annexed to and made part of statement of facts of Mrs. Sarah Williams, filed nunc pro tunc on 31 Jan'y, 1870.—Filed March 7th, 1870.

No. 21914.

To the honorable the sixth district court of New Orleans:

The petition of the State of Louisiana respectfully represents that the Bank of Louisiana, a corporation and body politic created under the laws of this State, and established in the city of New Orleans,
64 in June, 1863, having already previously committed many acts of forfeiture of its charter, and entered into new relations with the so-called Confederate States of America, in violation of the laws and purpose under which and for which it was created, was declared insolvent by an order issued by the commander of the Department of the Gulf, and the said bank and its assets placed in the possession of commissioners appointed by him, who were directed to put the same in liquidation and to provide specially for the payment of the bill-holders; that the affairs of the said bank continued to be administered by commissioners appointed and subject to the said military authority until January, 1866, when the control of the said bank was restored to the corporators by order of said military authority; that since that time the said board of directors appointed by the stockholders have had

charge of the same and have unsuccessfully continued the liquidation of said bank until the said bank has involved in a considerable number of suits instituted and still pending against said bank by its creditors, and

65 that the said directors can actually no longer carry on the work of liquidation in which they have been engaged, as they have solemnly declared it by a resolution passed at one of their special meeting, held on the 11th day of February, 1868, in which they have authorized the president of said bank to instruct the counsel of the bank to institute proceedings under the act of March 14th, 1842, for a meeting of the stockholders of the bank, to be convoked to deliberate and determine upon the expediency of surrendering the charter of the bank, with a view to a liquidation of the said bank, for the common benefit and advantage of the creditors of the said bank, in conformity with the provision of law, as it appears by said resolution and application of said bank filed in this honorable court under the No. 21737 of the docket of the court hereto annexed for reference, and to be made part of this petition; that, in consequence of said resolution and application, a meeting of the stockholders of the bank was held by order of this court, on the 23d of April, 1868, at the banking house of said bank, in this city, for the aforesaid purpose; that the said meet-

66 ing was only attended by few stockholders, who have unjudiciously posponed this matter of great expediency at a period of time which would be detrimental and injurious to the bill-holders, depositors, and other creditors of the bank, (if proper measures and remedy should not immediately be taken to protect the said creditors in permitting to some creditors of the bank to proceed in obtaining executing judgment against the property of the bank,) in violation of the law which confer a wright to the bill-holders of the bank to be paid by preference to other creditors of the bank; that at the said meeting, helden the 23d April, 1868, as aforesaid, the State of Louisiana, by the ministry of the attorney general of the State, has reserved to herself the right to demand the forfeiture of the charter of said bank, to be declared before a competent tribunal of the State and judicial liquidation of its affairs, to be enforced after the dissolution of said corporation, in order to prevent creditors to obtain an unjust preference over those who are to be protected by the law.

67 Petitioner further represents that the urgency to put said bank in forced liquidation under the aforesaid law is so pressing that the property of said bank is already seized and advertised for sale by the sheriff of the parish of Orleans, in order to give a preference to creditors who are not entitled to it by law, but who would acquire the same if the others were not protected.

Wherefore, under those circumstances, and the premises being considered, your petitioner prays that the said Bank of Louisiana, through its president, be cited to appear and answer this petition; that the said bank be ruled to show cause, in ten days after the service of this petition, why its charter should not be decreed to be forfeited, the corporation dissolved, and liquidators or commissioners appointed according to law to settle and wind up the affairs of said bank according to law, and, on its failing to show good cause, that judgment be entered decreeing the forfeiture of said charter, the dissolution of said corporation, and its liquidation according to law, with costs. And your petitioner prays that

68 during the pending of these proceedings for the forfeiture of the charter of [of] said bank, all legal proceedings on behalf of individual creditors against said bank be stayed; that an injunction issue prohibiting the president of said bank from paying any funds, dis-

posing of and assigning any assets or property, of said bank until further order of the court; and that the sheriff of the parish of Orleans, and the clerks of the district courts of New Orleans be notified thereof. And petitioner prays for general relief.

(Signed) B. L. LYNCH,
Attorney General of the State of Louisiana.

Order on petition.

Let the Bank of Louisiana, through its president, be ordered to show cause, within ten days after the service of the within petition, why judgment should not be entered decreeing the forfeiture of the charter of said bank and the dissolution and liquidation of said corporation, and why liquidators and commissioners should not be appointed to settle and wind up the affa'rs of said bank according to law.

Further, let all legal proceedings on behalf of individual creditors of said bank be stayed during the pendency of these proceedings; let
69 a writ of injunction issue prohibiting the president of said bank from paying any funds, disposing of and assigning any assets or property, of said bank until the further order of court; and let the sheriff of the parish of Orleans, and the clerks of the district courts of New Orleans be notified hereof.

New Orleans, May 1st, 1868.

(Signed) G. DUPLANTIER, *Judge.*

Judgment.

In this case, for the reasons assigned in the within opinion of the [the] court this day delivered and filed, it is ordered and decreed that the charter of the Bank of Louisiana, an incorporated institution and body politic under the laws of this State, be declared forfeited, null, and void; that the said corporation be dissolved; and that its affairs be liquidated according to law.

It is further ordered that all judicial proceedings against said bank be stayed; that notice hereof be published once a week in two newspapers of this city, in French and in English, during one month; that a board of three commissioners be organized for the purposes of the liquida-
70 tion of its affairs; and that Charles Eugene Willoz be appointed one of the above three commissioners.

Judgment rendered 20th May, 1868.
" signed 22 May, "
(Signed) G. DUPLANTIER, *Judge.*

A true copy:
[SEAL.] (Signed) M. WELPER, *Clerk.*

Document marked "C C," annexed to and made part of statement of facts in case of Mrs. Sarah Williams vs. Bank of Louisiana, filed nunc pro tunc as of 31 *January*, 1870.—*Filed March 7th*, 1870.

1869.

June 2. Paid Farrot, Chamberlin & Lamont, att'ys, their fees of obtaining judgment in suit vs. estate of Jno. L. Lobdell $200

4. Paid clerk fees in suit of State of Louisiana vs. Bank of L'a 65 50

	10.	Paid sheriff costs in suit of Bank of L'a vs. A. W. Dunbar and wife	108 83
	11.	F. Grima, not. pub., for profes'l services as allowed by the ac. rendered, & tableau filed & homologated	800
Aug.	3.	Paid Dudley & Nelson our proportion State & parish taxes, special tax, & expenses, as per bill on acc't of the "California" plantation, say on half of $176 76	88 38
Sept.	14.	Paid Sun Mutual Ins'ce Com'y for insurance policy No. 5275, on house No. 50, Conti street	$42 50
71	1869.		
	Sept. 25.	Paid city tax & costs for 1868, on same house.	192 60
Oct.	13.	Paid clerk's costs for transcript in 6th dis't court in case of State of L'a vs. Bank of L'a	280 10
	13.	Paid W. F. Mellens, def't, for taxes of 1867 & 1868, (State and parish,) on Mess. Giel planta.	392 50
	13.	Paid do. do. on Park plant	471 63
	"	Paid do. do. Dunbantu plant	159 95
	22.	" T. Grima, not. pub., process-verbal of meeting of creditors	10
Nvb.	5.	Paid James Buckner for rent of office 5 months, to 1st inst., at $125 per month	625

Document marked "D D," annexed to & made part of statement of facts in case of Mrs. Sarah Williams vs. Bank of Louisiana, filed nunc pro tunc as of 31st Jan'ry, 1870.—March 7th, 1870.

District court of the United States in and for the district of Louisiana, sitting in bankruptcy.

SARAH WILLIAMS, WIDOW, &C., *vs.* BANK OF LOUISIANA. } No. 1066.

Petition.—Filed December 11th, 1869.

To the Honorable E. H. Durell, judge of the district court of
72 the United States for the district of Louisiana:

The petition of Sarah Williams, (widow of Henry Williams,) of the city of New Orleans, in the parish of Orleans, & State of Louisiana, respectfully shows that she is a creditor of the Bank of Louisiana, which for a period of twelve months preceding the date of the filing of this petition has had its domicil at the city of New Orleans, parish of Orleans, & State of Louisiana, and district aforesaid; that the said bank is a corporation, moneyed, business, & commercial, & has been such for twenty years & more by virtue of the laws of the State of Louisiana; that your petitioner's demand is provable against the said Bank of Louisiana, in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867; that she believes said bank of Louisiana owes debts to an amount exceeding the sum of three hundred dollars; that your petitioner's demand exceeds the [the] amount of two hundred and fifty dollars; and that the nature of your petitioner's demand against the said Bank of Louisiana is as follows: Three
73 several certificates of deposits of said Bank of Louisiana, signed

by Aug. Mintreuil, cashier of said bank, for one hundred dollars each, No. 561, dated New Orleans, January 7th, 1863; No. 687, dated New Orleans, March 9th, 1863; No. 574, dated New Orleans, January 26th, 1863, declaring each that Mrs. Sarah Williams has deposited in said bank the sums aforesaid, for the use and payable only to order of herself endorsed on said certificates, & its return, payable one year after date, & bearing seven [30] per cent. interest per annum until maturity, & on which interest has been paid up to 7th January, 1864.

And your petitioner further represents that, within the six calendar months next preceding the date of this petition, the said Bank of Louisiana did commit sundry and divers acts of bankruptcy within the meaning of said act, to wit: That the said Bank of Louisiana, being a banker, some time before the filing of this petition has suspended and refused payment of its commercial paper, and has not resumed the same
74 within a period of fourteen days, nor at any time since; that one John Henry, having obtained a judgment against said Bank of Lonisiana in the third district court of New Orleans, on the 2d of March, 1868, said judgment being signed on the 20th March, 1868, for the sum of seven thousand eight hundred & sixteen $\frac{50}{100}$ dollars, moneys deposited in said bank, & five per centum per annum interest thereon from 24th April, 1862, issued an execution or fieri facias upon said judgment, and thereunder seized property of said bank; that thereupon, to wit, on or about the 1st day of May, 1868, an application was made to the sixth district court of New Orleans, by the attorney general of the State of Louisiana, and in the name of said State, for a forced surrender of said Bank of Louisiana & the liquidation of its affairs, said application being based on the act of the State of Louisiana entitled "An act to provide for the liquidation of banks," approved 14th March, 1842, and for the liquidation of its affairs in the manner provided by said act; that, although at the time of said application the act of 1842 on which it was based was no longer in force, the same having been re-
75 pealed by acts of the State of Louisiana, or suspended in its operation by the act of Congress entitled "An act to establish a uniform system of bankruptcy," approved March 2d, 1867, no opposition was made by said bank to said application, but, on the contrary, said, bank did assent to the same, and did all in its power to expedite and facilitate proceedings thereon, and did suffer judgment by default to be rendered and to be confirmed on 20th May, 1868, by which judgment all its property and assets of every description were surrendered into the possession and placed under the control of certain persons who were appointed by said court commissioners to liquidate the affairs of said bank, and said court did at the same time order all proceedings against said bank to be stayed, and said bank did acquiesce in said judgment, and allow the same to be executed, and still continues to acquiesce therein, and allow said commissioners to retain possession of all the property and assets of said bank, and did thereby suffer and procure, and does still suffer & procure, its property to be taken on legal
76 process, issued on & by virtue of said judgment, with intent to give a preference to some of its creditors, specially the holders of circulating notes of said bank, over all other creditors, & to make the distribution of its assets according to the State laws of bankruptcy & insolvency in conflict with the provisions of the bankrupt law aforesaid; that by said proceedings and judgment said John Henry was prevented from further executing his aforesaid writ of fieri facias, and all other persons having claims or being creditors of said Bank of Louisiana were and are prevented by the order of said sixth district court of

New Orleans from prosecuting at law the said Bank of Louisiana; that said order is still existing; that, so existing, it is a bar in all the courts of Louisiana against the prosecution of said bank for any indebtedness; that said three commissioners received from said bank all the funds & effects of the same, and hold them & distribute them at their own pleasure, and defy all attempt to make them subject to the claim of your petitioner and others; that said commissioners so assume to
77 act for the said Bank of Louisiana, & as its proper officers, & with the assent of said bank, and maintain & assert the powers and authorities of the acts of Louisiana, under colour of which the said proceedings in the sixth district court of New Orleans were instituted and are carried on; that as such they assume to pay the debts of said bank at discretion, & at all times assert that creditors other than holders of the notes of said bank have no right or claim upon the assets or funds thereof until the said note-holders are paid; that said paid has paid within the six months prior to the filing of this petition the following sums to persons pretending to be creditors of said bank, to wit:

Fanolf Chamberlin,	$200	on or about June 30th, 1869.
Clerk 6th dist. court, parish of O'l's,	$65 50	" " "
Sheriff parish of Orleans	108 83	" " "
Felix Grima	800	" " "
Dudly & Nelson	88 30	on or ab't Oct. 22, 1869.
Sun. Mut. Ins. Comp'y	42 50	" " "
City of New Orleans	192 60	" " "
Clerk 6th dis't c't, p'h of Orle's	280 10	" " "
F. Grima	10	" " "
Collector tax. pars. of Concordia	392 50	" " "
Do. do	471 63	" " "
Do. do	159 95	" " "
78 James Buckner	500	on or about Mr. 1st, 1869

That said acts of said so-styled commissioners are & continue to be the acts of persons assuming to act for the Bank of Louisana and not repudiated by said bank, but suffered to be done; that the act of the legislature of Louisiana, under color of which the said commissioners pretend to act, have been repealed & no longer exist; that the pretended priorities or preference awarded, contended, & allowed are such as existed under bankrupt & insolvent laws of the State of Louisiana, & such only; & that the same have been suspended by the act of Congress of the United States aforesaid.

Now, your petitioner aver that said Bank of Louisiana has within the last six months removed all its property, with intent to avoid its being taken on legal process; that the said bank has transferred its estate, property, rights, and credits within the United States, with intent to delay and hinder its creditors; that the said bank, being insolvent and bankrupt, has, within the last six months, made the payments aforesaid, with intent to give preference to the creditors aforesaid, and has,
79 within the last six months, procured & suffered its property to be taken on the alleged legal process of said sixth district court of New Orleans, with intent to give a preference to its creditors by circulating or bank notes; that said payments & said procurements & sufferance of its property to be taken as aforesaid was and is with the intent to defeat & delay the operation of the act of Congress of the United States approved March 2d, 1867, entitled "An act to establish a system of bankruptcy throughout the United States."

Wherefore your petitioner prays that the said Bank of Louisiana

may be declared a bankrupt, and that a warrant may be issued to take possession of its estate; that the same may be distributed according to law; and that such further proceedings may be had therein as the law in such case prescribes.

(Signed) SARAH WILLIAMS, *Petitioner.*
(Signed) C. M. CONRAD & SON,
" J. B. EUSTIS,
" CLARK, BAYNE & RENSHAW,
Attorneys.

80 UNITED STATES OF AMERICA, *District of Louisiana, ss:*

I, Sarah Williams, widow of Henry Williams, the petitioner above-named, do hereby make solemn oath that the statements contained in the foregoing petition, subscribed by me, are true so far as the same are stated of my own knowledge, and that those matters which are stated therein on information and belief are true according to the best of my knowledge, information, & belief.

(Signed) SARAH WILLIAMS, *Petitioner.*

Subscribed and sworn to before me this 11th day of December, A. D. 1869.

(Signed) C. S. KELLOGG,
Register in Bankruptcy.

Affidavit.—Filed December 11, 1869.

In the district court of the United States for the district of Louisiana.

In the matter of the Bank of Louisiana, against whom a petition for adjudication of bankruptcy was filed on the 11th day of December, A. D. 1869.—In bankruptcy.

At New Orleans, in said district, on the 11th day of December,
81 A. D. 1869, before C. S. Kellogg, one of the registers of said court, in bankruptcy.

DISTRICT OF LOUISIANA, *ss:*

Sarah Williams, widow of Henry Williams, of New Orleans, in the parish of Orleans, and State of Louisiana, being duly sworn and examined at the time and place above mentioned, upon her oath says that the said Bank of Louisiana was, on or before the 11th day of December, A. D. 1869, and still is, justly and truly indebted unto this deponent in the sum of three hundred dollars, & interest from January 7th, 1864, the nature of deponent's claim being as follows: Three several certificates of deposit of said Bank of Louisiana, signed by Aug. Mintreuil, cashier of said bank, for one hundred dollars each, No. 561, dated New Orleans, January 7th, 1863; No. 687, dated New Orleans, March 9th, 1863; No. 574, dated New Orleans, January 26th, 1863, declaring each that Mrs. Sarah Williams has deposited in said Bank of Louisiana the sums aforesaid, for the use and payable only to order of herself endorsed on said certificates, and its return, payable one year after date, and bearing
82 seven [30] per cent. interest per annum until maturity, and on which interest has been paid up to January 7th, 1864.

(Signed) SARAH WILLIAMS,
Petitioning Creditors.

On the 11th day of December, A. D. 1869, before me personally appeared Sarah Williams, widow of Henry Williams, the above-named

petitioning creditor, & was duly sworn to the truth of the foregoing statement.

(Signed) C. S. KELLOGG,
Register in Bankruptcy.

FORM No. 57.

Order to show cause upon creditors' petition.

In the sixth district court of the United States for the district of Louisiana.

In the matter of the Bank of L'a, against whom a petition for adjudication of bankruptcy was filed on the 11th day of Dec'b'r, A. D. 1869.—No. 1066, in bankruptcy.

DISTRICT OF LOUISIANA, *ss:*

Upon filing proof sustaining the allegations of the petition aforesaid, it is ordered that the said defendant, the Bank of Louisiana, do appear at this court, as a court of bankruptcy, to be holden at New Or-
83 leans, in the parish of Orleans, and State of Louisiana and district aforesaid, on the 24th day of December, 1869, at 11 o'clock a. m., and show cause, if any there be, why the prayer of said petition should not be granted; and it is further ordered that a copy of said petition, together with a copy of this order, be served on said defendant by delivering the same at his last usual place of abode in said district at least five days previous to the day herein required for his appearance.

Witness the Honorable Edward H. Durell, judge of the said court, and the seal thereof, at New Orleans, in the said district, on the 11th day of December, A. D. 1869.

(Signed) E. H. DURELL, *Judge.*

Petition for injunction.—Filed December 11th, 1869.

To the Honorable E. H. Durell, judge of the district court of the United States for the district of Louisiana:

The petition of Sarah Williams, residing in the city of New Orleans, respectfully shows that, under color of the proceedings in & judgment rendered by the sixth district court of New Orleans, on or
84 about the 20th day of May, 1868, as stated in her petition this day filed herein, all the property of defendants & assets of every description, more particularly money, rights, and credits, have been placed in the possession & under the control of certain persons, to wit, of P. H. Morgan, C. E. Willoz, & John F. Irvine, and that said Irvine, one of the said commissioners, has resigned, and Henry Bezon has been appointed in his stead.

Wherefore your petitioner prays that an injunction may issue herein, enjoining and restraining said J. H. Morgan, C. E. Willoz, and H. Bezon from alienating or transferring, or otherwise disposing of any of the property or assets of the Bank of Louisiana, or from paying any of the debts thereof, and from otherwise interfering with the property, rights, or credits of said bank.

(Signed) C. M. CONRAD & SON,
J. B. EUSTIS,
CLARK, BAYNE & RENSHAW,
Att'ys.

Let an injunction issue herein as prayed for.
December 11th, 1869.
(Signed) E. H. DURELL, *Judge.*

85 *Affidavit of J. B. Eustis.—Filed December 11th, 1869.*

In the sixth district court of the United States for the district of Louisiana.

In the matter of the Bank of Louisiana, against whom a petition for adjudication of bankruptcy was filed on the 11th December, A. D. 1869.—In bankruptcy.

At New Orleans, in said district, on the 11th day of December, A. D. 1869, before me, C. S. Kellogg, one of the registers of said court in bankruptcy.

DISTRICT OF LOUISIANA, *ss:*

James B. Eustis, being duly sworn and examined, upon his oath says that he has examined the petition in this cause; that he knows that the act of bankruptcy therein charged & alleged to have been committed, from having examined the minutes of the commissioners of said Bank of Louisiana & the records of the proceedings of the cases mentioned in said petition, to wit, in the third and sixth district courts for the parish of Orleans.
(Signed) J. B. EUSTIS.

On the 11th day of December, A. D. 1869, appeared personally James B. Eustis, esquire, the above-named witness, and was duly sworn
86 to the truth of the foregoing statement.
(Signed) C. S. KELLOGG,
Register in Bankruptcy.

Writ of injunction.

United States of America, district court of the United States for the district of Louisiana.

SARAH WILLIAMS, WIDOW, &C., *vs.* BANK OF LOUISIANA. } No. 1066.

The President of the United States to P. H. Morgan, E. C. Willoz, & H. Bezon, greeting:

You and each of you are hereby enjoined and restrained from alienating, transferring, or otherwise disposing of any of the property or assets of the Bank of Louisiana, or from paying any of the debts thereof, and from interfering with the property, rights, or credits of said bank, until the further order of this court.

Witness the Honorable E. H. Durell, judge of the said court, at New Orleans, this 11th day of December, 1869.
[L. S.] (Signed) K. LOEW, *D'y Clerk.*

87 *Marshal's return.*

Received, December 13th, 1869, by the U. S. marshal, and, on the same

day, month, and year served a copy of the within writ of injunction on each of the parties named herein in the following manner, viz:

On P. H. Morgan, by handing the same to him in person.

On C. E. Willoz, by handing the same to him in person.

On H. Bezon, by handing the same to him in person.

New Orleans, December 13th, 1869.

(Signed) S. W. REED,
D'y U. S. Marshal.

Marshal's return on order to show cause, De'ber 24th, 1869.

Received, December 14th, 1869, by the U. S. marshal, and, on the same day, month, and year served a copy of the within order to show cause, and the accompanying petition, on the bank of Louisiana, by delivering the same to L. F. Generes, its president, in person.

New Orleans, December 15th, 1869.

(Signed) S. W. REED,
D'y U. S. Marshal.

88 *Intervention of commissioners.—Filed December 24th*, 1869.

No. 1066, U. S. dis't court.

MRS. SARAH WILLIAMS
vs.
BANK OF LOUISIANA.

Now comes Philip Hickey Morgan, Charles E. Willoz, and Henry Bezon, commissioners of the Bank of Louisiana, and, for the reasons hereinafter set forth, respectfully ask to intervene in and become parties to the above suit, and to show cause why the prayer of the plaintiff and petitioning creditors should not be granted.

Intervenors allege that the Bank of Louisiana was a corporation incorporated by an act of the legislature of the State, approved April 7th, 1824; that, having in various ways violated the provisions of its charter, the State of Louisiana, through its attorney general, instituted suit against the bank for the forfeiture of its charter and the dissolution of the corporation on the first day of May, 1868.

This suit was brought by the State in a court of competent jurisdiction, to wit, the sixth district court of New Orleans, and on the 22d day of May, 1868, a judgment was rendered by said court de-
89 creeing the charter of said bank to be forfeited and the corporation dissolved.

That under and in pursuance of the laws of the State of Louisiana providing for the liquidation of banks whose charters are decreed to be forfeited, or which have gone voluntarily into liquidation, your intervenors have been duly appointed commissioners to liquidate the affairs of said bank, and, in their said capacity, all the property of said bank is, by the laws of said State, vested in them, and they have taken oath and given many bonds to administer and distribute the same in accordance with these laws.

Further represent that, by reason of the said judgment, the Bank of Louisiana is dead, and has not been in existence since the 22d day of May, 1868.

Intervenors expressly deny that any act done by them since the 22d day of April, 1868, or since their appointment as commissioners, has

been done by the authority of the Bank of Louisiana, or any of its officers, but solely under and by virtue of the laws of the State of Louisiana; and that no payment, sale, or transfer of any property,
90 rights, or credits, or money of said bank has been made by them with the intent to give preference to any creditor or creditors of said bank, or to defeat or delay the operation of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, nor has any act whatever been done or committed by them, either as commissioners or in any other capacity, with such intent or for such purpose.

Further aver that said bank should not be declared bankrupt for any cause in said petition alleged.

Intervenors, therefore, pray that the said petition filed herein on the 11th day of December, 1869, may be dismissed at the cost of petitioner.

(Signed) COOLEY & PHILLIPS.
" CHAVET & DUPLANTIER.

Note of evidence.—Filed December 24th, 1869.

SARAH WILLIAMS
vs.
BANK OF LOUISIANA. } No. 1066.

Plaintiff offered in evidence the marshal return showing service of process; caused the defendant to be called, and, upon his not ap-
91 pearing, moved that the bank be declared bankrupt.

Counsel for commissioners represented that they had appeard & filed an intervention in their behalf, & the court took time to consider.

Hearing & submission.—Extract from minutes, December 24th, 1869.

SARAH WILLIAMS, WIDOW, &C.,
vs.
BANK OF LOUISIANA. } No. 1066.

This cause was called upon the order to show cause—present, Clark, Bayne & Renshaw, & Cooley & Phillips—when, after hearing the pleadings & counsel, the court took time to consider.

Judgment.—Rendered January 11th, 1870.

JOHN THORNHILL & ALS.
vs.
BANK OF LOUISIANA. } No. 1056.

SARAH WILLIAMS, WIDOW, &C.,
vs
BANK OF LOUISIANA. } No. 1066.

The court being satisfied, from a due consideration of the law & the evidence, that the facts set forth in the petitions were true, and it
92 is therefore adjudged that the Bank of Louisiana became bankrupt within the true intent & meaning of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, before the filing of the said petitions; for reasons orally assigned, the said Bank of Louisiana is therefore declared

& adjudged bankrupt accordingly; it is therefore ordered that said bankrupt shall, within 30 days after the date of this order, mak & deliver to the marshal, as messenger, a schedule of its creditors & inventory of its estate in the form & verified in the manner required of the petitioning debtor by said act; and it is further ordered that the parties holding any of the property of the said bank surrender the same to the proper officers of the court.

Rule for a new trial.—Extract from minutes, Jan'ry 14th, 1870.

JNO. THORNHILL ET AL. vs. BANK OF LOUISIANA. } No. 1056.

SARAH WILLIAMS, WID., v. SAME. } No. 1066.

On motion of John A. Campbell, Cooley & Phillips, & Charvet & Duplantier, attorneys for defendants in the above suits, and on suggesting to the court there is error in the judgment rendered therein, it is
93 ordered that the petitioning creditors, the plaintiffs in said suits, show cause on the 22d instant, at 11 a. m., why a new trial should not be granted and said judgment set aside.

Marshal return on rule.

Received, January 15th, 1870, by the U. S. marshal, and, on the 17th day of the same month and year, served a copy of the within rule on each of the parties named in the following manner, viz:

On Thomas Hunton, by delivering the same to him in person.

On Clark, Bayne & Renshaw, by delivering the same to Tho's L. Bayne, a member of said firm, in person.

New Orleans, Janu'y 17th, 1870.

(Signed) S. W. REED, *D'y U. S. Marshal.*

Order, rule for new trial discharged.—Extract from minutes, Jan'y 22d, 1870.

SARAH WILLIAMS, WIDOW, &C., vs. BANK OF LOUISIANA. } No. 1066.

The rule taken by defendants on 14th instant was called up—
94 Colley & Phillips for plaintiffs in rule, Tho's Hunton, & Clarke, Bayne & Renshaw for defendants in rule—when it is ordered that the rule be discharged and a new trial refused, with costs.

Certificate of clerk.

United States district court for the district of Louisiana.

I certify the foregoing to be a true copy of the record & proceedings in the matter of Sarah Williams vs. the Bank of Louisiana, No. 1066 of the docket, with the exception of the order granted by his Honor W. B.

Woods, circuit judge, on the 21st, & filed on 22d Janu'y, 1870, suspending all further proceedings herein until further orders.

Witness my hand & the seal of our court at New Orleans this 28th Jan'y, 1870.

[L. S.] (Signed) CH'S CLAIBORNE, *C'ks*,
" Per K. LOEW, *D'y Clerk*.

Document marked " E E," being copy of act of legislature annexed to, made part of, & filed with, statement of facts of Mrs. Williams.

An act to authorise the settlement of debts due by the State to certain banks in the city of New Orleans by the issue of bonds, and to
95 provide for the payment of the same.

Whereas the State of Louisiana is indebted to the following-named banks in the city of New Oleans, to wit:

The Louisiana State Bank in the sum of
To the Canal Bank in the sum of
To the Bank of Louisiana in the sum of seven hundred thousand dollars.
To the Citizens' Bank of Louisiana in the sum of
The Mechanics & Traders' Bank in the sum of
To the Union Bank in the sum of
To the Bank of New Orleans in the sum of
To the Merchants' Bank in the sum of
And to the Crescent City Bank in the sum of
Making an aggregate total amount of

Be it enacted by the senate and house of representative of the State of Louisiana in general assembly convened, That the governor of the State of Louisiana is hereby authorized, directed, and required to deliver and issue, and deliver to each of said banks an amunt of the bonds of
96 this State, signed by him, and countersigned by the secretary of state, and sealed with the seal of the State, equivalent to the amount of indebtedness hereinbefore mentioned as due to each of said banks respectively; that said bonds will be dated first January, 1870, and be made payable forty years after this date to bearer, and shall bear interest payable semi-annually on the first day of January and July of each year, at the rate of seven per cent. and three-tenths of one per cent. per annum; that said bonds, before being issued, shall be registered in the books of the auditor & treasurer, shall be made in sums one hundred, five hundred, and one thousand dollars, and shall have interest coupons attached to represent the semi-annual interest, which interest coupons shall be signed and stamped by the governor: *Provided*, That, at the time said bonds are delivered to said banks respectively, each one of said banks shall express in the receipt given therefore to the governor, that said bonds mentioned in the receipt are received in full settlement and satisfaction of all claims or demands whatever they have against the State of Louisiana.

97 SECT. 2D. *Be it further enacted, &c., &c.*, That, immediately after the issue of said bonds, as hereinabove provided, and as above directed, the auditor of public accounts shall estimate the amount of interest annually accrueing on all of said bonds, added to one-fortieth part of the principal, and shall levy, on the assessment rolls of 1870, a tax sufficient to meet the payment of the said annual interest and one-fortieth part of the principal; and shall continue to estimate and levy the said tax annually on the assessment rolls of each and every year until the bonds issued under this act, and the interest coupons thereto at-

tached, shall be redeemed and paid. And all sums paid into the treasury as the proceeds of said tax shall be placed to the credit of a fund, to be known and kept on the books of the auditor and treasurer as "the banks settlement funds," which funds shall be used exclusively in payment of the interest and the redemption of the above-described bonds, and for no other purpose whatever. And this section shall be deemed and construed as an inviolable contract between the State and the holders of said bonds.

98 SECT. 3D. *Be it further enacted, &c., &c.*, That, on the thirty-first day of December, for each and every year, after allowing for all interest due on said bonds, the auditor shall ascertain the amount of money remaining in the treasury of the State to the credit of said "bank settlement fund," and with such money he shall immediately purchase and redeem as many of such bonds as possible, after inviting proposals and bids from holders of such bonds, by ten days' public notice and advertisement in the official paper of the State, commencing on the 1st day of February of each year; and the bonds so purchased shall be immediately cancelled and destroyed by the auditor, in the presence of the secretary of state & governor.

SECT. 4TH. *Be it further enacted, &c., &c.*, That the sum of ten thousand dollars, or so much thereof as may be necessary, be, and the same is hereby, appropriated out of any moneys in the treasury not otherwise appropriated to pay the expense of printing, lithographying, or engraving, and stamping said bonds, to be paid on the warrant of the governor.

99 SECT. 5. *Be it further enacted, &c., &c.*, That the amount of bonds issued under this act shall not exceed the sum of ; and that this act shall take effect from and after its passage.

Opinion and decree on petition of review.—Filed March 2d, 1870.

JOHN THORNHILL ET ALS.
vs.
THE BANK OF LOUISIANA.

SARAH WILLIAMS, WIDOW,
vs.
THE BANK OF LOUISIANA.

Opinion

These causes were petitions filed to obtain an adjudication of bankruptcy against the defendant, under the section of the general bankrupt act providing for involuntary bankruptcy.

After argument and re-argument, the United States district court for the district of Louisiana, (Hon. E. H. Durell, judge,) on the 11th January last, rendered judgment, declaring and adjudging the Bank of Louisiana a bankrupt.

To review and reverse this adjudication a petition of review was filed on Janu'y 22d, in the United States circuit court for the fifth judicial circuit and district of Louisiana, by C. E. Willoz, P. H. Morgan, and J.
100 F. Irwin, as commissioners of the Bank of Louisiana, appointed under a State law by the sixth district court of the parish of Orleans, for the purpose of liquidating the affairs of the bank.

The defendants to the petition of review except to the petition on the ground that the petitioners (the commissioners aforesaid) are not the legal representatives of the bank; that the act of the general assembly of Louisiana, under the color of which the petitioners claim to represent

the bank, and which was approved March 14th, 1842, was a bankrupt and insolvent law, and was suspended by the act of Congress approved March 2d, 1867, to establish a uniform system of bankruptcy throughout the United States; that therefore the petitioners are without right or authority to interfere in these proceedings; that they have not been aggrieved by the adjudication aforesaid, and their petition of review should be dismissed.

It appears from the agreed statement of facts that on the 11th of February, 1868, the board of directors of the bank passed a resolution authorizing the president of the bank to instruct its counsel to in-
101 stitute proceedings under the second section of the act of the general assembly of Louisiana approved March 14th, 1842, for a meeting of the stockholders of the bank to deliberate and determine upon the expediency of surrendering its charter, with a view to a liquidation of the bank for the common benefit and advantage of the creditors and stockholders of the bank, and in conformity with the provisions of law; that, by authority of this resolution, the counsel of the bank, on the 24th February, 1868, filed in the sixth district court of New Orleans the petition of the president, directors, and company, alleging that the bank was in a position which rendered it impossible for it at that time to discharge its liabilities to its creditors and stockholders, reciting the resolution above mentioned, and praying the court for an order for a meeting of the stockholders, for the purpose of deliberating on the expediency of surrendering the charter of the bank; that it having been found impossible to obtain the necessary attendance of the stockholders to make a voluntary surrender of the charter, the attorney general of the State of Louisiana, on May 1st, 1868, filed a peti-
102 tion in the same court for the forfeiture of the charter of the bank; that the bank filed no answer to said petition, but the board of directors, having been informed by the president that he had been served with an injunction and a citation and copy of petition from the sixth district court, in a suit instituted by the attorney general for the forfeiture of the charter of the bank, the board of directors thereupon resolved, "That the cashier be authorized to inform the attorney general that no answer would be made in said cause, and that the court will decide the question raised upon the facts put in proof on the part of the State;" that on the 20th of May, 1868, the sixth district ordered and decreed that the charter of the bank be declared forfeited, null, and void; that all judicial proceedings against the bank be stayed; that a board of three commissioners, of whom Charles Eugene Willoz should be one, should be organized for the purpose of the liquidation of its affairs; that, under this judgment, commissioners were appointed, who immediately assumed the administration of the
103 property and assets of the bank, and proceeded to liquidate the affairs of the bank, under the laws of the State of Louisiana, until their proceedings were arrested by the filing of the petition of John Thornhill and others, in the United district court of Louisiana, May 20th, 1869.

The act of the general assembly of Louisiana under which these proceedings were had is entitled, "An act to provide for the liquidation of banks." The first section of the act provides in certain specified cases for the forced forfeiture by judicial proceedings of the charters of any of the banks located in the city of New Orleans, at the instance of the attorney general, on petition filed by him in the name of the State. The second, third, fourth, fifth, and sixth sections provides for a volun-

tary surrender of charter and dissolution of the corporations by certain proceedings of the stockholders, and the decree of the court.

In case either of a forced forfeiture or a voluntary surrender of the charter of a bank, the act requires the court to appoint commissioners, who are empowered to take possession of all the property and effects of the bank of every description, with all its books, papers,
104 and accounts, to make an inventory of the property and effects, to supervise the destruction of all the notes of the bank found on hand, to collect the assets and pay the debts of the bank as prescribed by the law, and, having done this, to distribute any balance that may remain on hand among the stockholders rateably, according to the number of shares held by each.

The petitioners in review claim that, under the provisions of this act, the charter of the Bank of Louisiana was declared forfeited, null, and void by a court of general and competent jurisdiction; that, as a consequence of this decree, the bank, when proceedings in bankruptcy were commenced against it, was no longer in existence as a corporate body; that it was dead, and no proceedings could therefore be taken against it.

The conflicting views of the petitioners in review and the defendants in review bring up the question whether the act of March 14th, 1842, remained in force after the taking effect of the general bankrupt law on June 1st, 1867. If the State law was suspended or repealed by the bankrupt law, the sixth district court had no jurisdiction to pro-
105 ceed under that law, and, notwithstanding it may be a court of general jurisdiction, its decree is void. Where there is no jurisdiction of the subject-matter, the action of the court is a nullity and may be collaterally impeached. In Thompson vs. Talmie, (2 Peters, 163,) it was held that "if there is a total want of jurisdiction, the proceedings are void and a mere nullity, and confer no right and afford no justification, and may be rejected when collaterally drawn in question."

In Voorhees vs. Bank of the United States, (10 Peters, 474,) the court held that "a judgment or execution irreversible by a Supreme Court cannot be declared a nullity by any authority of law if it has been rendered by a court of competent jurisdiction of the parties the subject-matter, with authority to use process it has issued. The errors of the court do not impair their validity; binding until reversed, our most solemn proceedings can confer no right which is derived, to any judicial act, under color of law, which can properly be decreed to have been done coram non judice; that is, by persons assuming the judicial function in the given case without authority of law."

106 In determining whether the act of 1842 continued in force after the taking effect of the general bankrupt law, and as a consequence whether the sixth district court had jurisdiction to proceed under that law, it is pertinent to inquire into the nature, purpose, and effect of the act.

From an inspection of the law, it is evident that it is intended as a bankrupt or insolvent act. It provides for the voluntary and involuntary bankruptcy of insolvent banks. By virtue of the provisions of the law, the entire property of the corporation is taken from its control and placed in the hands the commissioners appointed by a power other than the bank. They, and they alone, are authorized and required to collect its assets, pay its debts, and distribute the surplus, if any, among the stockholders, and, by a decree of forfeiture or dissolution, the corporation is discharged from liability after the final settlement of its affairs; for, being dead, it cannot be sued or stand in judgment. Section 24 of the act provides that, in all matters not specially provided for in

the act, the powers, duties, and liabilities of the commissioners
107 shall be the same as those conferred or imposed on syndics of insolvent estates, &c.

Here we have all the elements of a bankrupt law—insolvency, surrender of property, its administration by assignees or commissioners, distribution among creditors of the assets, and, in effect, the discharge of the insolvent corporation.

The act of 1842 has been repeatedly held by the supreme court of Louisiana to be a bankrupt or insolvent law. In Citizens' Bank of Louisiana vs. Levee Steam Cotton Press Company, (7 Annual Reports, 288,) Eustis, C. J., referring to the act of 1842, says: "We do not perceive in this legislation anything more than an exercise of power which the government of the State has over bankrupt estates. This power is inherent in all well-regulated governments under which commerce is regulated."

In Mudge & others vs. Commissioners of the Exchange and Banking Company, (10 Robinson, 464,) the court says: "We concur in the opinion expressed by our learned brother of the commercial court, that the power of the legislature to provide for the distribution of the property of insolvent corporations which have forfeited their charter among the creditors is undoubted, and in considering these acts for the liquida-
108 tion of banks as are other than insolvent laws applicable to such corporations."

See also Dorville vs. City Bank, (9 Robinson, 366,) and French vs. Stanton et als, (1 Annual Rep't, 8.)

We are, therefore, forced by the terms of the law itself, and by the construction put upon it by the supreme court of Louisiana, to the conclusion that the act of 1842 is a bankrupt or insolvent law. An examination of the act further shows that its provisions apply, as well as those of the general bankrupt act, to moneyed corporation, and that it prescribes a different rule for the distribution of the assets of the insolvent corporation from that established by the bankrupt law.

Can these two laws, applicable to the same subject-matter, and prescribing different modes of proceedings and different results, coexist; and, if not, which must give way?

The Constitution of the United States, having empowered the Congress to establish uniform laws on the subject of bankruptcies throughout the United States, and the Congress having exercised this power in the enactment of the bankrupt act, and the Constitution further providing that the laws of the United States which shall be
109 made in pursuance of the Constitution shall be the supreme law of the land, the inference is irresistible that State laws on the subject of bankruptcy and insolvency must yield to the law of Congress on the same subject where the State laws applies to the same subject-matter; and where it differs, in material respects, from the law of Congress, it appears clear that the State law is suspended while the law of Congress remain in force.

So in Griswold vs. Pratt, (9 Metcalf, 23,) the court held: "Considering our insolvent law to be a system introduced for the purpose of sequestering the effects of the insolvent debtor, and of discharging him of all debts contrated after the enactment of the law, we are satisfied that the two systems cannot stand together; that the provision of the Constitution authorizing Congress to establish a uniform bankrupt law does not of itself prevent the inactment of insolvent laws by individual States, yet, when the power is exercised by Congress, and a bankrupt law is in force, it does not suspend all State insolvent laws applicable to like cases, and that this effect follows the inactment of such

110 bankrupt law, and does not require the actual institution of proceedings in bankruptcy to produce such result."

In May & others vs. Buel & others, (7 Cushing, 40,) the court uses this language: "When a uniform system of bankruptcy, under a law of the United States, is actually in force, to the [the] extent to which it reaches, it must of necessity suspend State laws, because they would be repugnant."

In Clark, assignee, vs. Rosenda and another, (5 Robinson Louisiana Report, 33,) Garland, J., in speaking of the effect of the general bankrupt law of 1841, says: "I cannot imagine a more ample investment of jurisdiction than Congress has conferred on the circuit and district court of the United States, and the extent of the jurisdiction proves that the national legislature, whilst exercising its constitutional power to establish a uniform system of bankruptcy, intended to suspend, if not sweep out of existence, the insolvent laws of the States and the jurisdiction of their tribunals, and to establish other tribunals, with ample powers, where justice should be administered alike to all, and a general system formed and controlled by a body of judges deriving their authority from the same power that made the law."

Marshall, C. J., in Sturges vs. Crowinshield, (4 Wheaton, 195,) says: "It does not appear to be a violent construction of the Constitu-

111 tion of the United States, and is certainly a convenient one, to consider the power of the State as existing over such cases as the law of the Union may not reach * * . It is not the right to establish these uniform laws, but their actual establishments, which is inconsistent with the partial acts of the State."

The Bank of Louisiana is, according to the agreed statement of facts, an insolvent moneyed corporation. Such a corporate body falls within the purview of the general bankrupt law of the United States; and, according to the authorities cited, a State law applicable to a like case is in effect suspended by the act of Congress.

I am of opinion, therefore, that, on the taking effect of the general bankrupt law of the United States, on June 1st, 1867, the law of the State of Louisiana approved March 14th, 1842, providing for the liquidation of banks, was suspended; that the State courts had no jurisdiction to proceed under it; that all the proceedings of the sixth district court, under the State act against the Bank of Louisiana, were unauthorized, coram non judice, null and void.

Against this view it is urged that a State alone has power to forfeit the charter of a corporation created by itself; that the general bankrupt law does not provide for the forfeiture of the charters or the

112 dissolution of insolvent corporations; that, therefore, that part of the State law of 1842 which make provision for such forfeitures is not suspended by the bankrupt law, but left in full force, and the State court, under that provision of the law, having forfeited the charter of the bank, there is no corporate person in esse for the bankrupt law to operate on.

This argument may be fairly reduced to this proposition—that, although the national courts have exclusive jurisdiction in bankruptcy of insolvent moneyed corporations, yet, under the device and pretext of forfeiting the charters of the banks, the State courts may oust the jurisdiction of the federal courts, assume jurisdiction themselves, and give to a State law the effect of repealing and suspending an act of Congress expressly authorized by the Constitution. This cannot be allowed. No mode of proceeding authorized by a State law can be permitted to have this effect. If the forfeiture, under the State law, of the charter of the

bank raises an obstacle to the jurisdiction of the federal courts, then the claim authorizing the forfeiture of the charter is suspended by the federal law. To hold otherwise is to allow the States, by a particular form of liquidation, to override a law of Congress on a subject on which Congress, by the Constitution, has supreme power.

Under the State law of 1842 the courts are not authorized to
113 forfeit the charters of the banks, and there stop. They are required to proceed by the appointment of commissioners to the liquidation of the affairs of the bank; in effect, to administer a bankrupt law of the State. Is it possible that, by so short and simple a method, the State courts can wrest from the federal courts a jurisdiction conferred exclusively on them?

I do not undertake to decide what effect the decree of the sixth court forfeiting the charter of the bank may have as between the State and the bank; but I hold the State court had no power and jurisdiction to render a decree which could take from the federal courts a power and jurisdiction given them by act of Congress; that, for all the purposes of the bankrupt act, and the liquidation of its affairs thereunder, the Bank of Louisiana still exists as a corporate body, and may be proceeded against as such in bankruptcy.

A corporation may still exist for the purposes of liquidation, although its charter may have been surrendered or forfeited. In Commercial Bank vs. W. W. Villavaso, (6th Annual L'a Rep., 542,) it was held that a commercial bank, having gone into liquidation under the act of March, 1842, was no reason why the commissioners appointed to liquidate its affairs should not use the corporate name of the bank in collecting its assets by judicial proceedings.

114 It results from the views of the sixth district court had no power to appoint commissioners in liquidation for the Bank of Louisiana; that the attempt to appoint such commissioners is a void act; that the commissioners named by the court do not represent the bank; that they are without right or authority to interfere in these proceedings; that they are not aggrieved by the adjudication of the district court of the United States for the district of Louisiana; and that for these reasons, if no other, their petition for review should be dismissed.

Without further prolonging this opinion, I hold upon the other questions raised in the case: (1,) that this court has territorial jurisdiction to hear this petition in review, in chambers, at any place within the fifth judicial circuit; (2,) that the adjudication in bankruptcy made by the U. S. district court may be reviewed by petition of review addressed to the circuit court or any justice thereof; and, (3,) that the judgment of the United States district court adjudging the Bank of Louisiana a bankrupt is sustained by the admitted facts in this case, and ought not to be disturbed.

Decree.

It is therefore ordered, adjudged, and decreed that the petition of review filed in this court on the 22d day of January, 1870, by Charles E. Willoz, Philip H. Morgan, and Henry Bezon, as commissioners of the Bank of Louisiana, in the cases of John Thornhill & others against the Bank of Louisiana, and Mrs. S. Williams vs. Bank of Louisiana,
115 be, and the same is hereby, dismissed out of this court, at their costs; that the judgment of the United States district court for the district of Louisiana, rendered on the 11th day of January, 1870, whereby, on the hearing of the cases aforesaid, the Bank of Louisiana

was adjudged a bankrupt, be affirmed, and that the order heretofore made that all further proceedings in said district court be suspended, and the marshal enjoined from taking any action under the judgment rendered by the said United States district court in said suits until the further order of this court, be, and the same is hereby, rescinded and revoked; and that the clerk of the circuit court of the United States for the fifth judicial circuit and district of Louisiana enter this order and decree upon the minutes of said court, and certify the same to the clerk of the United States district court for the district of Louisiana.

(Signed) W. B. WOODS,
U. S. Circuit Judge for the 5th Judicial Circuit and District of Louisiana.

Decree entered March 2d, 1870.

116 *Petition to modify injunctions.—Filed February 28th*, 1870.

To the honorable the judges of the United States circuit court for the fifth circuit, district of Louisiana:

The petition of Philip Hicky Morgan, Charles E. Willoz, and Henry Bezon, commissioners of the Bank of Louisiana, residents of the State and district aforesaid, respectfully represents that they present herewith a petition for an appeal from a judgment rendered in the suit of John Thornhill and others and Mrs. Sarah Williams vs. the Bank of Louisiana, No. 6056 of the docket of this honorable court; that during the pendency of the said appeal, which your petitioners believe it their duty as well as their right, under the laws of the State and the oath of office which they have taken, to ask for and prosecute, the interests of the creditors of the bank will be seriously injured unless your petitioners, the commissioners of said bank, are authorized to take such steps as may be necessary to protect the property and interests of the bank.

Your petitioners further represent that until the final decision of this case it is necessary that the several injunctions herein issued should be so modified as to permit said commissioners to defray the necessary expenses of the administration and liquidation of the affairs of the bank,
and of these, as well as all other legal proceedings which may
117 be necessarily incurred by the commissioners in the proper discharge of their duties; that by said injunctions your petitioners are now prohibited and enjoined "from all litigation with reference to the rights or assets of said bank, from interfering with the property, rights, or credits of said bank, from making any transfer or disposition of any part of the assets of the said Bank of Louisiana now in your possession or under your control as commissioners of said Bank of Louisiana, or any payment out of said assets during the pendency of these proceedings;" that, unless those injunctions be modified as aforesaid, your petitioners will be virtually deprived of the right of obtaining the decision of the Supreme Court of the United States upon the important questions involved in the case.

Wherefore your petitioners pray that your honor will so modify the injunctions issued by the honorable the district court of the United States for the district of Louisiana in the cases of John Thornhill and als. and Mrs. Sarah Williams vs. the Bank of Louisiana, as to enable them, acting as commissioners of the Bank of Louisiana, to do whatever may be necessary to protect and preserve the interests and property of said bank and of its creditors during the pendency of these proceedings, to prosecute and defend all suits in which the interests of the bank are

involved, to take all legal measures for the preservation and col-
118 lection of the assets of the bank, and also to defray the necessary expenses of all such litigation, and also all necessary expenses incurred in defending these proceedings in bankruptcy, and also the necessary expenses of administering and liquidating the affairs of the bank until the final decision of the cause.

Further pray for such further orders and relief as your honor may deem just and equitable and necessary in the premises.

(Signed) COOLEY & PHILLIPS, &
CHARVET & DUPLANTIER,
For Petitioners.

Order on foregoing petition.

Ordered that the petitioning creditors do show cause, either orally or by brief, before me, in chambers, at the United States court-rooms in Mobile, Alabama, on Friday, the 4th day of March, 1870, why the prayer contained in the above petition should not be granted. It is further ordered that a copy of this petition and order be served on the counsel of the petitioning creditors.

(Signed) W. B. WOODS,
U. S. Circuit Judge for the 5th Judicial Circuit.

U. S. marshall's return on petition.

Received, February 28th, 1870, by the U. S. marshall, and on the same day, month, and year served a copy of the within petition and order on John Thornhill & als. through Thomas Hunton, their att'y, by delivering the same to him, said att'y, in person; and, also, on same day,
119 month, and year served a like copy of the within petition and order on Mrs. Sarah Williams, through Clarke, Bayne & Renshaw, her att'ys, by delivering the same to Henry Renshaw, jr., one of the said att'ys, in person.

New Orleans, February 28th, 1870.

(Signed) S. W. REED,
D'y U. S. Marshall.

Order disallowing & refusing to modify injunctions.

On hearing the above petition the same is hereby disallowed and refused.

Done in chambers in Mobile this 4th day of March, 1870.

(Signed) W. B. WOODS,
U. S. Circuit Judge for the 5th Circuit & District of Louisiana.

Petition of appeal.—Filed March 7th, 1870.

To the honorable the judges of the circuit court of the United States for the fifth circuit, district of Louisiana:

The petition of Philip Hickey Morgan, Charles E. Willoz, and Henry Bezon, commissioners of the Bank of Louisiana, residents of the State of Louisiana and district aforesaid, with respect represents that a final decree was rendered against them by this honorable court on the day of February, 1870, in the suit entitled John Thornhill & als. and Mrs. Sarah Williams vs. the Bank of Louisiana, No. 6056 of

120 the docket of this honorable court; that your petitioners are aggrieved by said decree, and believe the same to be erroneous and not in conformity to law, and they are desirous of appealing therefrom to the Supreme Court of the United States to operate as a suspersideas.

Wherefore your petitioners pray that an appeal be granted them from the said judgment, returnable to the Supreme Court of the United States, according to law, and that a supersideas be awarded them on their giving bond and security conditioned according to law in such amount as your honor shall direct.

(Signed) COOLEY & PHILIPS, &
CHARVET & DUPLANTIER,
Attorneys for Petitioners.

Order on foregoing petition.

The above petition for an appeal was presented to the Honorable W'm B. Woods, circuit judge, in chambers, in Mobile, Ala., on the 4th day of March, 1870, and also a bond with good and sufficient security was at the same time tendered.

The appeal was refused upon the ground that this was not a case in which the law authorises an appeal.

The bond was considered by the judge to be good and sufficient and in the sufficient penalty of five thousand dollars, and conditioned according to law; but, the judge being of opinion that no appeal will
121 lie from the decree rendered in this case, it was ordered and adjudged by him that the appeal be refused.

It was further ordered by his honor that this petition and this entry thereon refusing to grant the appeal, and the bond of appeal tendered, be filed by the clerk in the record of the suit.

(Signed) W. B. WOODS,
U. S. Circuit Judge for the 5th Judicial Circuit and District of Louisiana.

Bond of appeal.—Filed March 7th. 1870.

Know all men by these presents that we, Philip H. Morgan, Charles E. Willoz, and Henry Bezon, commissioners of the Bank of Louisiana, as principals, and Auguste Willoz and Antoine Sarrat, as sureties, are held and firmly bound, jointly and severally, unto John Thornhill, Geo. L. Thompson, Isidore Newman, and Mrs. Sarah Williams, defendants in appeal, in the sum of five thousand dollars, lawful money of the United States of America, to be paid to the said John Thornhill, Geo. L Thompson, Isidore Newman, and Mrs. Sarah Williams, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the day of , in the year of our Lord eighteen hundred and seventy.

122 Whereas the said Philip H. Morgan, Charles E. Willoz, and Henry Bezon, the above-bounden principals, have this day presented a petition to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, praying for an appeal from a decree rendered by said court in the suit of John Thornhill & als. and Mrs. Sarah Williams vs. the Bank of Louisiana, No. 6056 of the docket of said court, and filed in the office of the clerk of said court on the 2d day of March, 1870:

Now, the condition of the above obligation is, that we, the above-bounden P. H. Morgan, C. E. Willoz, and H. Bezon, as commissioners and principals, and Auguste Willoz and Antoine Sarrat, as sureties, will well and truly pay to the said John Thornhill, Geo. L. Thompson, Isidore Newman, and Mrs. Sarah Williams, the defendants in said appeal, all such damages as they may recover against us in case it should be decided that the said appeal was wrongfully claimed.

(Signed) P. H. MORGAN. [L. S.]
" C. E. WILLOZ. [L. S.]
" HENRY BEZON. [L. S.]
" A. WILLOZ. [L. S.]
" A. SARRAT. [L. S.]

Signed, sealed, and delivered in presence of—
(Signed) D. URBAN, *U. S. Com'r.*

Affidavit of Auguste Willoz, surety.

UNITED STATES OF AMERICA,
District of Louisiana, ss:

Personally appearing before me, the undersigned, a United
123 States commissioner in and for the district aforesaid, Auguste Willoz, surety on the within bond, who being duly sworn, deposes and says that he resides in the city of New Orleans; that he is worth the sum of ten thousand dollars over and above his just debts and liabilities; that he owns real estate in his own right, situated in the parish of Orleans, Louisiana; that the value of the same is about $20,000; that the same is assessed at about $13,000; that he owns personal property, valued at about $40,000; that he has no debts or liabilities.

(Signed) A. WILLOZ.

Sworn to and subscribed before me the 2d day of March, 1870.
[SEAL.] (Signed) D. URBAN,
United States Commissioner.

Affidavit of Antoine Sarrat, surety.

UNITED STATES OF AMERICA,
District of Louisiana, ss:

Personally appearing before me, the undersigned, a United States commissioner in and for the district aforesaid, Antoine Sarrat, surety on the within bond, who, being duly sworn, deposes and says that he resides in the city of New Orleans; that he is worth the sum of twenty thousand dollars over and above his just debts and liabilities; that he owns real estate in his own right, situated in the parish of Orleans, Louisiana; that the value of the same is about $12,600; that the same is assessed at about $8,000; that he owns personal property, valued at about $2,000; that he has no debts or liabilities.

(Signed) A. SARRAT.

124 Sworn to and subscribed before me this 2d day of March, 1870.
[SEAL.] (Signed) D. URBAN,
United States Commissioner.

Approval of bond of appeal.

The within bond was tendered to me in the case within mentioned, and is by me approved and considered good and sufficient in form, amount,

and sufficiencies of sureties; but the appeal is refused for the reasons stated in overruling the petition of appeal on file in this case.

(Signed) W. B. WOODS,
U. S. Circuit Judge for the 5th Circuit and District of Louisiana.

Order to file certain documents nunc pro tunc as for January 31st, 1870.—Received & filed March 7th, 1870.

No. 6056.—U. S. circuit court, fifth circuit, district of Louisiana.

JOHN THORNHILL & ALS. & MRS. SARAH WILLIAMS
vs.
THE BANK OF LOUISIANA.

The clerk of this court will file in the above suit nunc pro tunc as of the 31st day of January, A. D. 1870, the following documents, to wit:

1st. Exception for want of territorial jurisdiction. Presented by T. Hunton, att'y for J. Thornhill & als., petitioning creditors.

2d. Exception to jurisdiction of court to review & reverse the judgment of the district court. Presented by same party.

125 3d. Exception for want of authority or interest in the commissioners. Presented by same party.

4th. Statement of facts in case of John Thornhill & als. vs. Bank of Louisiana. Presented by same party.

5th. Statement of facts in case of Mrs. Sarah Williams vs. Bank of Louisiana. Presented by counsel for Mrs. Sarah Williams.

(Signed) W. B. WOODS,
U. S. Circuit Judge 5th Circuit & District of Louisiana.

126 *Petition and order thereon.—Filed March 24th, 1870.*

To the Honorable Noah H. Swayne, justice of the Supreme Court of the United States:

The petition of Philip Hickey Morgan, Charles E. Willoz, and Henry Bezon, commissioners of the Bank of Louisiana, citizens of the State and district of Louisiana, respectfully represents that, on the eleventh day of January, 1870, a judgment was rendered by the United States district court for the district of Louisiana, in the suits of John Thornhill & als. vs. the Bank of Louisiana, No. 1056, and Mrs. Sarah Williams vs. the same, No. 1066 of the docket of said court, adjudging the said bank to be a bankrupt, and your petitioners were ordered to surrender the property and assets of the said bank which were in their hands as commissioners to the proper officers of said court; that there-

127 upon a petition of review was filed by your petitioners in the honorable the circuit court of the United States for the fifth circuit and district of Louisiana, setting forth the proceedings had in said cases in the district court, and the orders and decree rendered therein, and praying that the same be set aside and rescinded; that upon the hearing of said petition a final decreee was rendered by said circuit court on the 2d day of March, 1870, dismissing the same, and affirming the judgment of the district court; that a petition of appeal was presented to the Hon. W. B. Woods, the United States circuit judge for the said circuit, who refused to grant the appeal upon the sole ground that this was not a case in which the law authorises an appeal from the circuit to the Supreme Court; that on the 3d day of March, 1870, a warrant was issued by said district court commanding the United States marshal to take possession of all the estate, real and per-

sonal, of the said bank, under which warrant the said marshal
128 has taken possession of all the property and assets, and of all the books, papers, &c., belonging to the said bank which were in the possession of your petitioners, as the commissioners thereof; that the assets and property so taken from the possession of your petitioners by the said marshal exceed in value the sum of one hundred thousand dollars. Your petitioners represent that they are aggrieved by said decree of the circuit court, and believe the same to be erroneous and not in conformity to law, and they desire to obtain an order of appeal therefrom to the Supreme Court of the United States; and also a writ of supersedeas suspending all further proceedings under said decree of the circuit court, and under the judgment of the district court, and quashing the warrant issued by the said district court, and ordering the same to be returned and the property taken possession of thereunder by
129 the marshal to be restored by him to your petitioners until the final decision of the case.

Your petitioners are ready, and tender herewith a good and sufficient bond for such amount as your honor may require.

Wherefore your petitioners pray that an appeal may be granted them from said final decree of the circuit court to the Supreme Court of the United States, and that a writ of supersedeas may issue suspending all further proceedings under said decree, and under the said judgment of the district court, until the case shall be finally heard and determined in the Supreme Court; and that the warrant issued by the district court be quashed, and ordered to be returned, and that the marshal be ordered to restore to petitioners the property which he has taken from them under said warrant; further pray for such further orders and relief as your honor may deem necessary and proper in the premises.

(Signed) COOLEY & PHILLIPS,
Att'ys for Petitioners.

130 *Order.*

Let an appeal be granted on petitioners giving bond and security, conditioned according to law, in the sum of five thousand dollars, returnable to the Supreme Court of the United States on the first Monday of December, 1870, and let a writ of supersedeas issue as prayed for.

(Signed) N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

Bond for appeal, filed March 7th, 1870, (to be found transcribed at page 121.) Withdrawn and lodged in the clerk's office on 24th March, 1870, with the following endorsement thereon:

The within bond is approved.

(Signed) N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

Motion and order on presenting order of Hon. Noah H. Swayne,
131 *associate justice, &c. granting appeal, &c., &c.—Presented to the court March 24th, 1870.*

U. S. Circuit Court.—No. 6056.

JOHN THORNHILL & AL. AND SARAH WILLIAMS } In bankruptcy.
vs.
BANK OF LOUISIANA. }

On motion of Cooley and Phillips, and on presenting the petition on

part of the defendant in the above matters, addressed and submitted to Hon. Noah H. Swayne, associate justice of the Supreme Court of the United States, and presiding judge of this court, sitting in chambers, praying that an appeal to the Supreme Court of the United States be allowed them from the decree herein entered on the 2d day of March, 1870, affirming the decree of the district court of the United States for this district in the above cases, upon complying with the requirements of
132 the law; and praying, moreover, that a writ of supersedeas be issued suspending all further proceedings under said decrees; and that the warrant issued by the said district court on the 3d day of March, 1870, directing the marshal to take possession of the property and assets of said Bank of Louisiana, be ordered to be returned into court and be quashed, and that the property taken under the same be restored to the commissioners of the said bank; and, on reading the order thereon granting the prayer of said petition, it is ordered that the said petition be filed, and that the order thereon be entered of record.

Order.

Let an appeal be granted on petitioners giving bond and security, conditioned according to law, in the sum of five thousand dollars, returnable to the Supreme Court of the United States on the first Monday of December, 1870, and let a writ of supersedeas issue as prayed for.

N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

133 *Writ of supersedeas.—Issued to the judge of the U. S. district court on the 24th of March, 1870, and to the U. S. marshal on the 25th of March, 1870.*

Circuit court of the United States, fifth circuit and district of Louisiana.

The President of the United States to the hon. the judge of the district court of the United States for the district of Louisiana, and to the marshal of the United States for the said district, greeting:

Whereas it satisfactorily appearing that lately, in the said district court, before you, sitting in bankruptcy in the two several matters of John Thornhill & al. against the Bank of Louisiana, No. 1056 of the docket, and of Sarah Williams against the Bank of Louisiana, No. 1066 of the docket, a decree was rendered, adjudging the said Bank of Louisiana to be a bankrupt, and ordering Phillip H. Morgan,
134 Charles E. Willoz, and Henry Bezon, the commissioners thereof, to surrender the property and assets of the said bank which were in their hands to the proper officer of the said district court in bankruptcy; that thereupon a petition of review was filed in the hon. the circuit court of the United States for the 5th circuit and district of Louisiana by the said commissioners for and on behalf of the said bank, praying that the said decree and order might be set aside and rescinded; that, by final decree of the said circuit court, entered on the 2d day of March, 1870, the said petition of review was dismissed, and the decree of the said district court was affirmed; that a petition on behalf of the said bank, praying to be allowed an appeal from the said final decree of the said circuit court to the Supreme Court of the United States was duly presented to Hon. W. B. Woods, one of the judges of the
135 said circuit court, and was by him disallowed; that on the 3d day of March, 1870, a warrant was issued to the marshal of the Uni-

ted States for the said district by the said district court, under its decree so affirmed as aforesaid by the said circuit court, commanding him to take from the possession of the commissioners of the said bank all the assets, books, papers, and estate, real and personal, belonging to the said bank, which said warrant is in process of execution; that the said assets and property exceed in value one hundred thousand dollars:

And whereas the said commissioners of the said Bank of Louisiana have presented to Hon. N. H. Swayne, associate justice of the Supreme Court of the United States and presiding judge of the said circuit court of the United States for the 5th circuit and district of Louisiana, representing, among other things, that they are aggrieved by the said decree of the said circuit court, and praying to be allowed an appeal
136 therefrom to the Supreme Court of the United States; and further praying for a writ of supersedeas to suspend all further proceedings under the said decrees of the said district and circuit courts until the final decision of the said matters in the Supreme Court of the United States; and that the said marshal be ordered to restore to the commissioners of the said bank the property by him taken under the said warrant:

Now, therefore, you, the marshal of the United States for the district of Louisiana, are hereby commanded that, from any and all further proceedings under the said warrant, or in any wise molesting the said commissioners of the said bank on the account aforesaid, you entirely surcease, as being superseded, and that you forthwith return the said warrant, together with this supersedeas, to the said district court of the United States, and restore to the said commissioners of the
137 said Bank of Louisiana the property of the said bank which you may have taken from their possession under the said warrant, as you will answer the contrary at your peril. And you, the judge of the district court of the United States for the district of Louisiana, are hereby commanded that you cause the said warrant to be quashed, and that such further proceedings be had in the premises in conformity to this writ as according to right and justice and the laws of the United States ought to be had, the said warrant notwithstanding.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 24th day of March, in the year of our Lord 1870.

[SEAL.] (Signed) D. URBAN,
Clerk U. S. C. C.

Received, March 25th, 1870, by the U. S. marshal, and service of the within writ of supersedeas acknowledged this day.

(Signed) S. P. PACKARD, *U. S. Marshal*,
By F. A. WOOLFLEY, *Deputy.*

138 *Order.—Extract from the minutes.*

United States circuit court, 5th circuit & district of Louisville, November term, 1869.

NEW ORLEANS, *Thursday, March 24th*, 1870.

Court met pursuant to adjournment; present, Hon. E. H. Durell, dist. judge.

JOHN THORNHILL & AL. & SARAH WILLIAMS
vs
BANK OF LOUISIANA. } No. 6056.

The defendant having prayed that the petition for appeal, addressed

to the Hon. Noah H. Swayne, associate justice of the Supreme Court of the United States, and presiding judge of this court, be filed, and that the order made by him in chambers upon said petition be entered of record, the court directed the clerk to notify the solicitors of the complaining creditors that the matter will be brought up on to-morrow
139 at 11 a. m.

Continuance.—Extract from the minutes of Friday, March 25th, 1870.

JOHN THORNHILL & AL. & MRS. SARAH WILLIAMS
vs.
BANK OF LOUISIANA. } No. 6056.

This cause came up agreeably to yesterday's order—present, Cooly & Phillips, Conrad & Son, Clarke, Bayne & Renshaw, Tho's Hunton, J. B. Eustis—when, upon the application of the solicitors for the complainants, the matter is continued till Tuesday, 29th instant, at 11 a. m.

Submission and order.—Extract from the minutes of Tuesday, March 29th, 1870.

140 JOHN THORNHILL & AL. AND MRS. SARAH Williams
vs.
BANK OF LOUISIANA. } No. 6056.

This cause came up agreeably to the order of the 25th instant—present, Tho's Hunton, Conrad & Son, Clarke, Bayne & Renshaw, J. B. Eustis, & Cooley & Phillips—when, upon the application of the solicitors for the complaining creditors, the court granted the following order, to wit:

On motion of Tho's Hunton, esq., of counsel for John Thornhill, and of C. M. Conrad & Son, & Ja's B. Eustis, of counsel for Mrs. Sarah Williams, and on their giving the court to be informed that since the order rendered by this court on the 24th day of March, 1870, assigning for argument on this day the motion made on the 24th day of said month, by the counsel for P. H. Morgan, Ch's E. Willoz, and Henry Bezou, styling themselves commissioners of the Bank of Louisiana, that a certain order rendered by his Honor Noah H. Swayne, associate justice of the Supreme Court of the United States, allowing an appeal
141 to the Supreme Court of the United States from the decree rendered by his Honor W. B. Woods, judge of the circuit court of the U. S. for the 5th circuit, dismissing the appeal taken by said so-called commissioners from the decree rendered by the hon. district court on the 11th day of January, 1870, whereby the Bank of Louisiana was declared bankrupt, should be recorded, and ordering a writ of supersedeas to issue, as prayed for in a petition accompanying said order, the said marshal had, without any lawful authority, delivered up certain assets in his possession belonging to said Bank of Louisiana, consisting of money, rights and credits, and other personal property, to said so-called commissioners, it is ordered by this court that the said marshal be directed immediately to resume possession of said assets until the further order of this court.

And after hearing argument of counsel the court took time to
142 consider, and requested the counsel to file their briefs within 3 days.

Motion.—Presented to the court on March 31st, 1870.

United States district court, district of Louisiana.

P. H. MORGAN & ALS., COMMISSIONERS of the Bank of Louisiana,
advs.
JOHN THORNHILL & ALS., PETITIONING creditors. } No. 6056.

The solicitors and attorneys of the plaintiffs, first protesting that the judge of the district court for the district of Louisiana has no legal right or authority to sit in this the circuit court on the trial of any cause in bankruptcy brought here by appeal, petition of review, or other process, from the district court of the district of Louisiana, or to try any such cause, or render any orders or decrees therein in this court, nor had the said circuit court any legal right or authority to pro-
143 ceed to grant the motion of the defendants filed on the 29th day of March, 1870, or to vacate the order and writ of supersedeas issued pursuant to the order of the Honorable N. H. Swayne, associate justice of the Supreme Court, or to order the marshal to resume possession of the assets of the Bank of Louisiana, or to grant any other order in the case, except to facilitate the transfer of the cause to the Supreme Court of the United States, respectfully submit the following motion:

On motion of Campbell, Spofford and Campbell, and Cooley and Phillips, solicitors and attorneys for the plaintiffs Philip Hickey Morgan, Charles E. Willoz, and Henry Bezon, commissioners of the Bank of Louisiana, and upon the production of the petition for appeal by them submitted with the orders and action of Judge W. B. Woods, U. S. circuit judge, and of Hon. N. H. Swayne, associate justice of
144 the Supreme Court of the United States, it is ordered that all proceedings in the circuit court upon the decree rendered in this case be superseded, since the rendition of the same. It is further ordered that the order in the nature of a procedento to the district court of the United States contained in that decree be recalled, and that an order be made to said court requiring the said court, its officers, and agents, to desist from all proceedings under the same; that the order of this court, rendered on the 29th day of March, 1870, which is in the following words: "It is ordered by this court that the said marshal be directed immediately to resume possession of said assets until the further order of this court," be vacated and annulled; and that the United States marshal be commanded to restore to plaintiffs all the property, money, effects, and credits, of which he may have become possessed by any seizure, in the hands of the plaintiffs, under or by virtue of
145 any order, proceedings, or writ issued from this court, or from the said district court, and that the injunction dissolved by said decree of the circuit court be reinstated, and that all things so remain until the order of the Supreme Court of the United States shall be made upon said appeal.

Order fixing prayer of motion.—Extract from the minutes of Thursday, March 31st, 1870.

P. H. MORGAN & AL., COMMISSIONERS of Bank of Louisiana, *ads.*
JOHN THORNHILL & ALS., PETITIONING creditors. } No. 6056.

Ordered, That the prayer of the motion this day presented by P. H. Morgan & al., commissioners, be set for hearing on to-morrow, 1st April, 1870, at 11 a. m., and that the solicitors for the complaining creditors be advised thereof.

146 *Marshal's return on the foregoing order.*

Received, March 31st, 1870, by the U. S. marshal, and on same day, month, and year did serve a copy of the within order on Thomas Hunton personally at 4 Carondelet street; and on Clarke, Bayne & Renshaw, in the hands of T. L. Bayne, 48 Camp street; and on J. B. Eustis, in the hands of J. G. Eustis, 23 Commercial Place; and on C. M. Conrad & Son, by delivering the same to C. M. Conrad at 37 Carondelet street.
New Orleans, April 1st, 1870.
(Signed) S. W. REED,
D'y U. S. Marshal.

Submission.—Extract from the minutes of Friday, April 1st, 1870.

JOHN THORNHILL & AL. & MRS. S. WILLIAMS *vs.* BANK OF LOUISIANA. } No. 6056.

147 This cause came up agreeably to the order of 31st ultimo—present, Cooley & Phillips, Campbell, Spofford & Campbell, Clarke, Bayne & Renshaw, J. B. Eustis, Thomas Hunton, C. M. Conrad, & Son—and, after hearing argument, the court took time to advise, and requested counsel to furnish their authorities.

Supplemental and explanatory order of Hon. N. H. Swayne, associate justice of the U. S. Supreme Court.—Extract from the minutes of Tuesday, April 19th, 1870.

JOHN THORNHILL & AL. *vs.* BANK OF LOUISIANA. } No. 6056.

This day appeared Th's Hunton, esq., solicitor for the complaining creditors, and read in open court the supplemental and explanatory order made by the Hon. N. H. Swayne, associate justice of the Su-
148 preme Court of the United States, on the 14th day of April, 1870, upon the petition of P. H. Morgan & al., commissioners of the Bank of Louisiana, praying for an appeal in this case. Whereupon it was ordered that the same be filed and spread on the minutes; and it is in the following words, viz:

Circuit court of the U. S. for 5th circuit and district of Louisiana.—In bankruptcy.

JOHN THORNHILL & AL.
vs
THE BANK OF LOUISIANA.

In granting an appeal herein to the Supreme Court of the United States with a writ of supersedeas upon the petition of P. H. Morgan et al., it was not intended that the order should operate as a supersedeas unless the order of appeal and bond and writ of supersedeas should be lodged in the clerk's office within the time prescribed by law, and the said order was not intended as a mandate upon the district court
149 to quash any warrant or writ issued therefrom, or to transfer or change the possession of any assets of the Bank of Louisiana under the control of the district court from the condition in which they were at the time the order allowing an appeal was made.

April 14th, 1870.

(Signed) N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

150 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to John Thornhill, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a petition of appeal & order allowing the same filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Philip Hicky Morgan, Charles E. Willoz, and Henry Bezon, commissioners of the Bank of Louisiana, are plaintiffs, and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiffs, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this fourth day of March, in the year of our Lord one thousand eight hundred and seventy.

N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

151 (Indorsed:) United States circuit court. No. 6056. John Thornhill & als. & Mrs. S. Williams vs. Bank of Louisiana. Citation of appeal. John Thornhill.

Filed March 24th, 1870.

F. R. VINOT, *D'y Clk.*

Marshal's return.

Received, Mar. 25, 1870, by the U. S. marshal, and, on the 26th day, same month and year, served a copy of the within citation of appeal on John Thornhill, named herein, by delivering the same to him in person, at his office, No. 194 Gravier street, in this city.

New Orleans, March 26th, 1870.

S. W. REED,
D'y U. S. Marshal.

152 THE UNITED STATES OF AMERICA,
District of Louisiana :

The President of the United States to George L. Thompson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a petition of appeal & order allowing the same, filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Philip Hicky Morgan, Charles E. Willoz, and Henry Bezon, commissioners of the Bank of Louisiana, are plaintiffs and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiffs, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this fourth day of March, in the year of our Lord one thousand eight hundred and seventy.

N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

153 (Indorsed:) United States circuit court. No. 6056. John Thornhill & als. & Mrs. S. Williams vs. Bank of Louisiana. Citation of appeal. Geo. L. Thompson.
Filed March 24, 1870.

F. B. VINOT, *D'y Clk.*

Marshal's return.

Received, Mar. 25, 1870, by the U. S. marshal, and on the same day, month, and year served a copy of the within citation of appeal on George L. Thompson, named herein, by delivering the same to Thomas Hunton, his attorney, at his office, No. 125 Gravier street, in this city.
New Orleans, March 25, 1870.

S. W. REED,
D'y U. S. Marshal.

154 THE UNITED STATES OF AMERICA,
District of Louisiana :

The President of the United States to Isidore Newman, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a petition of appeal & order allowing the same, filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Philip Hicky Morgan, Charles E. Willoz, and Henry Bezon, commissioners of the Bank of Louisiana, are plaintiffs and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiffs, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this fourth day of March, in the year of our Lord one thousand eight hundred and seventy.

N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

155 (Indorsed:) United States circuit court. No. 6056. John

Thornhill & als. & Mrs. S. Williams vs. Bank of Louisiana. Citation of appeal. Isidore Newman.
Filed March 24, 1870.

F. B. VINOT, *D'y Cl'k.*

Marshal's return.

Received, Mar. 25, 1870, by the U. S. Marshal, and on the same day, month, and year served a copy of the within citation of appeal on Isadore Newman, named herein, by delivering the same to him in person at his office, No. 27 Camp street, in this city.
New Orleans, March 25th, 1870.

S. W. REED,
D'y U. S. Marshal.

156 THE UNITED STATES OF AMERICA,
District of Louisiana :

The President of the United States to Mrs. Sarah Williams, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a petition of appeal & order allowing the same, filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Philip Hicky Morgan, Charles E. Willoz, and Henry Bezon, commissioners of the Bank of Louisiana, are plaintiffs and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiffs, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this fourth day of March, in the year of our Lord one thousand eight hundred and seventy.

N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

157 (Indorsed:) United States circuit court. No. 6056. John Thornhill & als. & Mrs. S. Williams vs. Bank of Louisiana. Citation of appeal. Mrs. Sarah Williams.
Filed March 24, 1870.

F. B. VINOT, *D'y Cl'k*

Marshal's return.

Received, Mar. 25th, 1870, by the U. S. marshal, and, on the 28th day, same month and year, served a copy of the within citation of appeal on Mrs. Sarah Williams, named herein, by delivering the same to her in person at her domicil, No. 111 Carondelet street, in this city.
New Orleans, March 28th, 1870.

S. W. REED,
D'y U. S. Marshal.

158 Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE:

I, Dominick Urban, clerk of the circuit court of the United States for fifth circuit and district of Louisiana, do hereby certify that the

foregoing manuscript pages, together with the printed pages, contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of John Thornhill & als. and Mrs. Williams vs. Bank of Louisiana, No. 6056 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 20th day of April, A. D. 1870.

[SEAL.] D. URBAN, *Clerk.*

[Five-cent internal revenue stamp affixed and canceled.]

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Dominick Urban, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law; and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 20 day of April, A. D. 1870.

E. H. DURELL, *Judge.*

[Five-cent internal revenue stamp affixed and canceled.]

(Indorsment on cover:) P. H. Morgan et al., commissioners of the Bank of Louisiana, appellants, vs. John Thornhill, George L. Thompson, Isidore Newman, & Sarah Williams. Louisiana C. C. U. S.

Filed 27th April, 1870.

In the Supreme Court of the U. S.

P. H. Morgan and Others,
Commissioners of Bank of La.
vs.
John Thornhill and als.,
Petitioning Creditors.
} No. 450.

It is respectfully represented and made known to this Honorable Court, that, on the 20th day of May, 1869, a petition was filed in the United States District Court for the District of Louisiana, sitting in bankruptcy, by John Thornhill and others, asking to have the Bank of Louisiana adjudged bankrupt; and on the 11th day of December, 1869, another petition for the same object was filed by Mrs. Sarah Williams.

Three preliminary injunctions were sued out by the petitioning creditors against P. H. Morgan, C. E. Willoz, and Henry Bezon, the commissioners appointed by the State Court to liquidate the affairs of the Bank, enjoining them from "making any transfer or disposition of any part of the assets of said Bank of Louisiana, now in your possession or under your control, as commissioners of said Bank of Louisiana, or any payment out of said assets. * * * From all litigations with reference to the rights or assets of said Bank, and from making any compromise touching the rights or assets of said Bank, and from interfering with the property or assets of the said Bank of Louisiana. * * * From alienating, transferring, or otherwise disposing of any of the property or assets of the Bank of Louisiana, or from paying any of the

debts thereof, and from interfering with the property, rights, or credits of said Bank until the further order of this Court."

Copies of said three injunctions, and of the three petitions for the same are contained in Exhibit "A," which is annexed to and made part hereof.

On the 11th of January, 1870, the District Court rendered a decree adjudging the Bank of Louisiana to be a bankrupt.

From the decree of the Circuit Court affirming this adjudication of the District Court, this appeal was taken. A bond of appeal, duly approved, was filed within the ten days from the rendition of said decree by the Circuit Court, which by law operated as a supersedeas.

That disregarding said appeal and bond, and, in violation of the order of the supersedeas, granted in the order for said appeal, the solicitors of the petitioning creditors were proceeding to cause the decree of the District Court to be executed, and had caused all the assets of the Bank to be seized and taken by the United States Marshal from the possession of the commissioners of the Bank, under a warrant in bankruptcy, issued by the said District Court, until their proceedings were arrested by an order of the United States Circuit Court giving effect to the appeal, as a supersedeas, and annulling all the orders of the Circuit and District Courts by virtue of which the Marshal had seized the property; thus compelling him to restore it to the possession of the commissioners. A copy of said order of the Circuit Court, together with the "opinion" of the Court is contained in Exhibit "B," which is annexed to and made part hereof.

That in order to accomplish their object of depriving the commissioners of the possession and control of the

assets, and the affairs of said Bank, the solicitors of the petitioning creditors applied to the said District Court on the 14th day of June, 1870, for the appointment of receivers for a particular purpose, specified in the motion filed therefor. Which application was unsuccessfully opposed by the counsel for the commissioners, and an order was granted by the said District Court appointing E. E. Norton and A. Miltenberger receivers, without any limitation or qualification whatever.

A copy of the motion to appoint receivers, with the answer of the commissioners thereto, and also an extract from the minutes of said District Court, containing the order appointing said receivers, are all contained in Exhibit "C," which is annexed to and made part hereof.

That in said order appointing receivers it was also "ordered that P. H. Morgan, C. E. Willoz, and H. Bezon do deliver possession of the assets of the Bank of Louisiana in their hands, or under their control, to the said receivers, and that the said receivers do hold said assets of the bank subject to the future order of this Court."

That under and by virtue of said peremptory order of court addressed to them personally and in their individual capacities, the said Morgan, Willoz, and Bezon were compelled to surrender up to said Norton and Miltenberger all the property and assets of the said bank which were in their possession or under their control as commissioners thereof.

That subsequently, to wit: on the 25th of June, 1870, the following order was rendered by said District Court, to wit: "On motion of Thos. Hunton, attorney for the receivers herein, and on suggesting that certain expenses have been heretofore incurred by the persons in charge of the assets of the bank, to wit: for rent of the building in

which the books and assets of the bank were lodged, and also for *charges of the Registers in bankruptcy and his clerks* incurred under orders of this Court—It is now ordered that the said receivers be and are hereby authorised to pay out of any funds which may be realized by them, the said rent, expenses and charges, and such other reasonable expenses and charges which may be incurred by them in discharge of their duties as receivers."

A copy of said order is contained in exhibit "D," annexed to and made part hereof.

That previously, to wit: on the 13th May, 1870, an order was issued by the District Court in the following words, to wit: "It is ordered that the Marshal, as messenger, do forthwith proceed to issue said notices (for the meeting of creditors) as required by law, and *that his costs be paid out of the funds of the bank.*" A copy of said order is contained in exhibit "E,"which is annexed to and made part hereof,

And it is further represented to your Honor that the aforesaid order of the 22d of June, appointing said receivers, and also those of the 25th June, and 13th of may, are believed to be erroneous, illegal an inequitable, and should be annuled and set aside, and that the said injunctions, if still in existence, should be dissolved, upon the following grounds, and for the following reasons, to wit:

First. Said receivers were appointed without any sufficient showing. No affidavit whatever having been made, nor did then, nor does there now exist any good or sufficient cause or grounds to authorise said appointment, and that said appointment was unauthorised by law.

Second. That the appellants, P. H. Morgan, C. E. Willoz and Henry Bezon, the commissioners of said bank, are officers of the State of Louisiana, regularly appointed pursuant to the laws thereof, and have taken oaths and given

bonds for the faithful discharge of their duties as commissioners, and they were placed in possession of the assets of the said bank, a defunct corporation, whose charter had been previously decreed forfeited, and the corporation dissolved by a judgment of a court of competent jurisdiction, which has never been reversed, and the said property should not and cannot be rightfully or legally taken from their possession until they shall be decreed to deliver it up by a final decision of the Supreme Court of the United States, where the case is now pending on appeal.

Third. That the proceedings in bankruptcy are believed not to be real and bona fide, but were instituted, and the preliminary injunctions were sued out by *debtors* of the bank in the names of persons interposed, solely for the purpose of defeating certain suits brought by the said commissioners in the state courts against them as the last officers and directors of the bank for the recovery of damages for mismangement and maladministration of its affairs.

Fourth. That the said preliminary injunctions have already caused and are still causing the loss of a considerable portion of the assets of the bank.

That a portion of the said assets consists of improved real estate in the City of New Orleans, worth about ninety thousand dollars, ($90,000,) and six plantations in the country, worth about one hundred thousand dollars, ($100,000.) The annual rent of all which is worth, and would probably bring from fifteen to twenty thousand dollars.

That in consequence of said injunctions the commissioners have been prohibited from renting said property or rendering it productive in any way, and are still unable to do so without rendering themselves liable to punishment for contempt of court, thereby causing an annual loss of from fifteen to twenty thousand dollars of assets of the bank.

Fifth. That there is now in the hands of attorneys of the bank for collection, bills, notes and bonds, amounting to eight hundred and seventy-four thousand six hundred and twenty dollars ($874,620,—) on which the commissioners have been compelled to instruct their attorneys to suspend proceedings in consequence of the said order enjoining them from all litigation with reference to the rights or assets of the bank.

Sixth. The said commissioners have been and are still prevented also by said orders from intervening in suits pending between other parties in which the interests of the bank are involved, to protect and preserve the rights of the creditors and stockholders of the bank.

That the loss of assets resulting from these causes, from the delay in enforcing the collection of said claims and from the death and insolvency of debtors of the bank, have already been and still continue to be very great and a large number of said claims will soon be entirely worthless.

officers

Seventh. That in April 1869 three suits were instituted in the courts of the State of Louisiana by said commissioners against the former ~~affairs~~ and directors of said bank for the recovery of upwards of $3,000,000 damages for mismanagement of the affairs of the bank.

Eighth. Exceptions which were filed to the jurisdiction of the court having been overruled, a portion of said defendants immediately commenced these proceedings in bankruptcy, suspending all further proceedings in said suits.

The suspension of proceedings in said suits has caused and is still causing great loss and damage to the stockholders and creditors of the bank, and will prevent the recovery of a large portion of said assets. Many of the defendants in said suits not having been cited at the time proceedings therein were suspended by said injunctions, the claims

against them for damages will soon be barred by prescription, and the death and insolvency of other defendants will cause the loss of a large portion of said assets.

All the above mentioned circumstances, as well as others, caused by the issuing of said injunctions, have and still are causing great loss of the assets of the bank, and thereby defeat *pro tanto*, the appellate jurisdiction of this court.

Ninth. That having taken a suspensive appeal from the decree of the Circuit Court and given a good and sufficient bond for a supersedeas, the commissioners became entitled to the possession and administration of the property of the bank until the case should be finally decided against them on appeal.

That the appointment of receivers and the continuance of said injunctions defeat and render nugatory and ineffectual the order of supersedeas rendered herein, and deprive appellants of the rights to which they are entitled by law from having taken a suspensive appeal and filed an approved bond within the legal status.

A copy of the opinion and order of the Circuit Court granting the order for supersedeas, is contained in exhibit "B," which is a nexed to and made part hereof.

Tenth. That the said orders of the 13th May and 25th June, directing the receivers and marshal to *pay out of the funds of the bank* the costs of these proceedings in bankruptcy before the bank is finally adjudged to be a bankrupt, and also other debts and charges, are believed to be illegal and unjust, make an illegal disposition of the property and assets of the bank and defeat *pro tanto* the appellate jurisdiction of this Honorable Court.

Eleventh. On the 11th of December, 1869, a written document was filed by the counsel for the petitioning creditors

wherein it was admitted that the injunctions were operating a serious detriment to the interests of the creditors of the bank, and consenting that they should be discharged so as to authorize the acting commissioners of the bank to take all legal measures for the preservation and collection of the assets of the bank, "without prejudice, however, to the interests of the petitioning creditors or the succession of W. Bogart."

A copy of this document is contained in exhibit "H," annexed hereto, for reference.

The object of the reservation herein contained being to prevent the commissioner from prosecuting the suits instituted by them in the State Courtsfor damages for mal-administration against John Thornhill and W. Bogart, who were clients of and represented by the counsel who signed the above "consent," and both of whom are defendan's in said suits. As to all the other defendants, he was willing the commissioners should go on and prosecute the suits against them.

To prevent this, the counsel for various other defendants in said suits immediately filed another petition in bankruptcy against the bank, in the name of Sarah Williams and obtained another injunction. All on the same day that the above "consent" was filed, to wit, the 11th Dec., 1869. Thus effectually preventing the commissioners from taking any further action in the premises.

For verification of these facts, reference is respectfully made to the record of appeal in this case, filed in the office of the clerk, p. p. 63 to 68, of the printed transcript. The record is also referred to for further information relative to the facts of this case.

Personally appeared before me Charles E. Willoz and Henry Bezon, who being duly sworn, depose and say, that

the statements and averments contained in the foregoing motion are true so far as the same are stated of our own knowledge, and that the matters which are stated therein on information and beleif, are true to the best of our knowledge, information and belief.

HENRY BEZON.

C. E. WILLOZ.

[SEAL.] Sworn to and subscribed before me this 19th of October, 1870.

D. URBAN,

United States Commissioner.

To the Honorable judge of the district court of the United States for the district of Louisiana:

The petition of John Thornhill and others, petitioning creditors, respectfully shows: That they are informed that an application has been made to the Hon. Sixth District Court of New Orleans to obtain an order of sale of the assets of the Bank of Louisiana, which application is still pending.

Your petitioners show that such a sale and disposition of said assets would defeat the operation of the bankrupt law herein.

Wherefore, they pray that your honor will issue an injunction restraining and enjoining P. H. Morgan, Charles E. Willoz, and John F. Irvine, individually and as acting commissioners of said bank, from making any transfer or disposition of any parts of the assets of said bank now in their possession, or under their control as commissioners

of the Bank of Louisiana, or any payment out of said assets during the pendency of these proceedings.

THOMAS HUNTON,
Attorney.

Let the writ of injunction issue as prayed for.
June 17, 1869.

E. H. DURELL, *Judge.*

No. 1056.

The President of the United States to P. H. Morgan, Charles E. Willoz, and John F. Irvine, individually and as acting commissioners of the Bank of Louisiana, greeting:

You and each of you, individually and as acting commissioners of the Bank of Louisiana, are hereby commanded, in the name of the President of the United States and of the United States district court for the district of Louisiana, sitting in bankruptcy, to refrain and desist from making any transfer or disposition of any part of the assets of said Bank of Louisiana, now in your possession or under your control as commissioners of said Bank of Louisiana, or any payment out of said assets during the pendency of these proceedings, and you are so enjoined until the further order of this court.

Witness the Hon. E. H. Durell, judge of our said [SEAL.] court, at New Orleans, this 17th day of June, A. D. 1869.

CHS. CLAIBORNE, *Clerk.*

To the hon. E. H. Durell, judge of the district court of the the United States for the district of Louisiana, sitting in bankruptcy:

The petition of John Thornhill et als., petitioning creditors, respectfully shows: That in order to preserve all the assets and claims of the Bank of Louisiana in their present condition during the pendency of these proceedings, it is necessary that this honorable court should issue an additional restraining order.

Wherefore, petitioners pray this Hon. court for an injunction restraining P. H. Morgan, C. E. Willoz, and John F. Irvine, acting commissioners of the said bank from all litigation with reference to the rights or assets of the said Bank of Louisiana, and from making any compromise touching the rights or assets of the said bank, and from any interference with the property or assets of the said Bank of Louisiana, otherwise than to hold the same as they now stand, subject to the further order of the court herein; and that all other persons be enjoined and restrained from any interference with the assets or property of the said bank during the pendency of these proceedings. And your petitioners pray for all necessary and proper orders in the premises.

THOS. HUNTON,
Attorney for petitioning creditors.

Writ of injunction allowed as prayed for, except that the same is not to effect the payment of the proper salaries of said commissioners and their employees.

June 1, 1869.

E. H. DURELL, *Judge.*

The President of the United States to P. H. Morgan, C. E. Willoz, and John F. Irvine, acting commissioners of the Bank of Louisiana, greeting:

You and each of you are hereby enjoined and restrained, in the name of the United States of America and of the district court of the United States for the district of Louisiana, from all litigation with reference to the rights or assets of said bank, and from making any compromise

touching the rights or assets of said bank, and from interfering with the property or assets of the said Bank of Louisiana, otherwise than to hold the same as they now stand, subject to th further order of the court in the premises.

It is further ordered that this injunction shall in no manner affect the payment of the proper salaries of said commissioners and their employees.

Witness the Hon. E. H. Durell, judge of said court, [SEAL.] at New Orleans, this 1st day of July, 1869.

K. LOEW, *D'y Clerk.*

To the Hon. E. H. Durell, judge of the district court of the United States for the district of Louisiana:

The petition of Sarah Williams, residing in the city of New Orleans, respectfully shows: That under color of the proceedings in, and judgment rendered by, the sixth district court of New Orleans, on or about the 20th day of May, 1868, as stated in her petition this day filed herein, all the property of defendants, and assets of every description, more particularly money, rights, and credits, have been placed in the possession and under the control of certain persons, to wit: of P. H. Morgan, C. E. Willoz, and John F. Irvine, and that said Irvine, one of said commissioners, has resigned, and Bezon has been appointed in his stead.

Wherefore, your petitioner prays that an injunction may issue herein, enjoining and restraining said P. H. Morgan, C. E. Willoz, and Bezon, from alienating or transferring, or otherwise disposing of any of the property or assets of the Bank of Louisiana, or from paying any of the debts thereof, and from otherwise interfering with the property, rights, or credits of said bank.

C. M. CONRAD & SON,
J. B. EUSTIS,
CLARKE, BAYNE & RENSHAW,
Att'ys.

Let an injunction issue as herein prayed for.
Dec'r 11, 1869.

E. H. DURELL, *Judge.*

No. 1066.

The President of the United States to P. H. Morgan, C. E. Willoz, and Bezon, greeting:

You and each of you are hereby enjoined and restrained from alienating, transferring, or otherwise disposing of any of the property or assets of the Bank of Louisiana, or from paying any of the debts thereof, and from interfering with the property, rights, or credits of said bank, until the further orders of this court.

Witness the Hon. E. H. Durell, judge of said court,
[SEAL.] at New Orleans, this 11th day of December. 1869.

K. LOEW, *D'y Clerk.*

District Court of the United States, district of Louisiana.

I certify that the foregoing are true and correct copies of the originals on file and of Record in this court.

Witness my hand and the seal of our court at New
[SEAL.] Orleans, this 8th of October, A. D. 1870.

CHS. CLAIBORNE, *Clk.*
per K. LOEW, *D'y Clk.*

"B."

CIRCUIT COURT OF THE UNITED STATES,
Fifth Circuit and District of Louisiana,
April Term, A. D., 1870.

NEW ORLEANS, *Tuesday, June* 7, 1870.

Court met pursuant to adjournment.—Present,—the Honorable J. P. Bradley, Asso. Justice Supreme Court, presiding,—present, the Honorable W. B. Woods, Circuit Judge.

JOHN THORNHILL, AND AL,
AND SARAH WILLIAMS,
vs.
BANK OF LOUISIANA.

No. 6056.

THE BANK OF LOUISIANA.

OPINION OF JUDGE BRADLEY.

Bradley, J.—In this case presented to the court yesterday, we have taken the matter under consideration, and have come to the conclusion that the appellant was entitled to a supersedeas. By the act of 1789, section 23, a writ of error, (which was the only process then given for resort to an appellate court) as well in equity as in common law cases was a supersedeas and a stay of execution in cases only where the writ of error was served by a copy thereof being lodged for the adverse party in the clerk's office, where the record remained, within ten days, (Sundays exclusive) after rendering the judgment or passing the decree complained of. A writ of error is no longer the the process for reviewing the decrees in equity or admiralty. By the act of March 3, 1803, it is declared that from all final judgments or decrees in any of the District Courts of the United States an appeal, where the matter in dispute shall exceed the sum of fifty dollars, shall be allowed to the Circuit Court; and from all final judgments or decrees rendered in any Circuit Court, in any cases of equity, admiralty, or maritime jurisdiction, etc., an appeal, where the matter in dispute exceeds two thousand dollars, shall be allowed to the Supreme Court of the United States, and such appeal shall be subject *to the same rules, regulations and restrictions as are prescribed in law in cases of writs of error.* This clause adopts the rules, regulations, and restrictions contained in the act of 1789—the time within

which the writ of error must be lodged in the clerk's office, in order to operate as a supersedeas, the citation to the adverse party, the security to be given to the plaintiff in error—the directions in reference to all these things are applicable to appeals under the act of 1803, and are to be *substantially* observed, except where the appeal is made at the same term and in open court, when a citation is not necessary.

Now, it is evident that the 23d section of the act of 1789 cannot be *literally* complied with in cases of appeal. For example, the writ of error or a copy of it cannot be filed for the adverse party in the clerk's office within ten days, for there is no writ of error. Only the spirit of the act of 1789 can in, many particulars, be carried out. In cases of appeal; the appeal may be taken orally in court. No written application need be made, either in court or to the judge. It is so held by the Supreme Court in 18 Howard In such a case, a copy of the writ of error, or copy of anything like a writ of error, or analagous to it cannot be filed.

But it is evident that something must be done by the appellant within ten days, in order to comply with the spirit of the act of 1789; that is, he must take his appeal and present his bond to the court or judge within that time, and he must file in the clerk's office either the bond or some other paper, or an entry must be made upon the minutes of the court, or something else must be done to show that the appeal has been taken within the ten days.

In this case the petition of appeal was presented to the judge within the ten days, accompanied by the bond. The bond was approved by the judge, but the petition of appeal was not allowed, because in his opinion, it was not a case for an appeal. The approval of the bond was indorsed by the judge on the bond, and his disallowance of

the petition of appeal was indorsed on the petition, and both were filed within five days in the clerk's office.

Now, it is evident that the party did all that he could possibly do in order to entitle himself to the protection of the law, except one thing, which he proceeded to do. He repaired to a Justice of the Supreme Court, after having made his application to the judge of the Circuit Court and having been refused, and thereupon the Justice of the Supreme Court allowed the appeal. A new petition of appeal, it is true, was presented, but the facts were fully stated therein—the fact of the former petition of appeal being presented and overruled, as well as the fact of the decree from which the appeal was taken. The Associate Justice of the Supreme Court allowed the appeal, and approved of the identical bond which had been previously presented to and approved by the Circuit Judge.

This new petition of appeal, with the allowance on it, was filed on the 24th of March, some twenty-one days after the decree was rendered.

Now, the question is whether the allowance of the appeal in this case is to relate back to the time when the original application was made for an appeal to the Judge of the Circuit Court. We are of the opinion that it does: that this party has done everything that in him lay to entitle him to a suspension of proceedings. At any rate, in the circuit court, which has control over its own processes and proceedings, we can do that which the Supreme Court could require us to do by writ of supersedeas. Whatever might be the disability or incapacity of a judge at chambers, we are under no such embarrassment. We can direct proceedings to be suspended to the same extent that the supreme Court would direct them to be suspended if it were applied to.

There may be some question as to the operation of the

supersedeas in this case. The proceedings in bankruptcy are in the District Court. A petition was presented to this court for the review of a certain decree or order of the District Court. The proceedings in the District Court were suspended until that review was had in this court.. Upon that review this court came to the conclusion to confirm the decision of the District Court. The appeal suspends the operation of that adjudication of the Circuit Court, and consequently holds the matter in statu quo, as if the Judge of the Circuit Court yet held the matter under advisement, and had not made any order in the case. This we consider to be the effect of the appeal as a superedeas; consequently all facts made or done by either court since the appeal was applied for are to be considered as vacated. If any order is necessary to effect it, it will be made. Matters will remain in statu quo, that is, they will remain as they were prior to any decree being rendered by this court.

It is hereby adjudged and decreed that all orders in the above entitled cause made by the Circuit or District Court since the 21st of January, 1870, the date of the injunction granted by the Circuit Judge, are hereby vacated and annulled, and it is ordered that all things be restored to the condition in which they stood at the date of said injunction.

Let a copy os this order be certified to the District Court.

Clerk's Office:

I certify the foregoing to be a true copy from the original record in this office. Witness my hand and [SEAL] seal of said Court, at the city of New Orleans, this 23d day of June, 1870.

F. B. VINOT,
Dep. Clerk.

"C"

U. S. DISTRCT COURT IN BANKRUPTCY.

JOHN THORNHILL, *and al.*
v.
BANK OF LOUISIANA. } No. 1056.

Rule filed June 14, 1870.

On motion of Thomas Hunton, Attorney for plaintiff Thornhill, *and al.* and on suggesting to the Court, that a large portion of the assets of the Bank is imperilled by the pending litigation herein, that prescription is running against the Bank and in favor of its debtors, on many of its claims that prescription has already been acquired by the debtors in many cases that interests of all parties concerned to wit: the creditors of the Bank require that this Court should exercise its equitable powers to preserve the assets of the Bank pending the present litigation.

It is ordered that Aristide Miltenberger and E. E. Norton be appointed receivers of the assets of the Bank, and be authorized to represent it for the following purposes only, that is to say: To collect all the assets of the Bank shown to be due by the marshal's inventory, and return herein filed March 22, 1870, and by the books of the Bank as actual assets at the date the said assets were received by P. H. Morgan, Charles E. Willoz and J. F. Irvine, styled commissioners, in pursuance to an order or decree of the Sixth District of New Orleans, and the said receiver is authorized to defend the interest of the said Bank and its creditors, in any litigation now pending or which may hereafter during the continuance of his office be instituted against the said Bank, and in order to protect the interests of the said Bank and its creditors, to employ all proper, necessary or legal means, so far as the claims or assets hereinbefore mentioned are concerned, to recover the same, and to appear in any suit where the Bank has been or may be im-

pleaded, and to use all proper and legal means to protect and defend its interests, and fully to represent the Bank of Louisiana in any Court in and about the claims and assets hereinbefore mentioned, and the defences to any suits which the interests of the Bank may require.

Order fixing said motion for hearing June 14, 1870.

Ordered that all parties interested show cause on the 18th inst., at 11 a. m., why the prayer of the motion this day presented by the complainants should not be granted.

Answer to rule to appoint Receiver filed June 18, 1870.

U. S. DISTRICT COURT IN BANKRUPTCY.

JOHN THORNHILL, *and al.*
v.
BANK OF LOUISIANA. } No. 1056.

Now come Philip Hickey Morgan, Charles E. Willoz and Henry Bezon, the commissioners of the Bank of Louisiana, and for answer to the taken herein against them by Jno. Thornhill and others on the 14th, and served on the 19th day of June 1870, to show cause why a receiver of the assets of the Bank of Louisiana should not be appointed with power to represent the said Bank for the purposes, and to the extent set forth in said rule, respectfully say: That there is no necessity, nor does there exist any legal or equitable grounds for the appointment of a receiver, nor is there any good or sufficient cause or grounds shown by the plaintiffs in said rule to authorize the appointment asked for.

That the matters and evils mentioned in said rule, and which are pretended to be the grounds for asking the appointment of a receiver, were and still are purposely brought about and caused by the plaintiffs in this rule themselves, through the means of certain illegal, inequitable and unnecessary injunctions sued out by them in this case.

That the express object and purpose of said injunctions was to prevent the commissioners of the Bank from prosecuting the suits which they had instituted against Jno. Thornhill and others for the recovery of the assets of the Bank.

That the only obstacle which does now or has at any time existed to the collection of said assets, and defending and protecting the rights and interests of the creditors of the Bank, in any and all the suits now pending are the said injunctions sued out by said Thornhill and others, by which the said commissioners are enjoined "from all litigation with reference to the rights or assets of said Bank;" which injunctions were issued a year ago, and the said commsisioners have consequently been unable since that time to take any action whatever in the premises.

That several applications have been made by the commissioners to have said injunctions modified so far as to permit them to sue for the recovery of the assets of the Bank, and to take such other steps pending this litigation as the interests of the creditors might require, all of which applications have been successfully opposed by plaintiffs in this rule, who are themselves the sole cause of all the evils, loss and damage complained of by them.

That the issuing of said injunctions arrested the commissioners in the discharge of their duties and prevented them from acting or doing anything to protect the rights and interests of the creditors of the Bank.

That the said commissioners are and have at all times, been ready and willing to discharge their duties faithfully, to collect the assets of the Bank and to preserve and properly administer the property of the Bank, and were doing so until restrained by said injunctions.

That the said commissioners are public officers appointed under the laws of this State, and are the proper and legal

custodians of the property of the Bank, and the only persons who can legally sue for the recovery of the assets unt.l it shall be finally decided otherwise, and that their appointment; was illegal which question is now pending before the Supreme Court of the U. States on appeal from a judgment of the Circuit Court affirming the decree of this Honorable Court rendered in these cases, which appeal operates as a supersedeas, and leaves the property in the hands of the commissioners as its legal custodians, until it shall be finally decided that they have no legal right to hold possession of the same.

The said commissioners respectfully refer to the answers and intervention filed and sworn to by them in these suits, and pray that they be taken and considered as part of this answer.

Wherefore they pray that the said rule be dismissed at plaintiffs, cost.

They further pray that said injunctions be modified so far as to permit the said commissioners to prosecute and defend the suits now pending, in which the Bank is a party or interested, or in which the commissioners thereof are parties, to institute such other suits as may be necessary, to defend such suits as may hereafter be brought against the Bank, or the commissioners thereof to collect the assets of the Bank, to rent or render productive the real estate of the Bank and to take such steps and do such acts as may be necessrry to protect and preserve the assets of the Bank and the interests of its creditors during the pendency of this litigation, subject to such limitations and restrictions as the Court may think proper to impose.

By their attorneys.

COOLEY & PHILLIPS.

Hearing of rule June 18, 1870.

JOHN THORNHILL, *and al.*
v
BANK OF LOUISIANA. } 1056.

The motion presented on 14th instant came up.

Thomas Hunton for movers; Cooley and Phillips for commissioners.

When, after hearing argument, the Court took time to advise.

(Extracts from minutes.)

Order appointing receivers June 22, 1870.

JOHN THORNHILL, *and al.*
v.
BANK OF LOUISIANA.

Ordered that the rule of 14th instant be made absolute, and that Aristide Miltenberger and E. E. Norton be appointed receivers, and that they give bond with security in the sum of $10,000 each, for the faithful performance of their duties as receivers; that said bond be made payable to the clerk of the United States District Court, for the benefit of all parties in interest. And it is further ordered that P. H. Morgan, Charles E. Willoz and Henry Bezon do deliver possession of the assets of the Bank of Louisiana in their hands or under their control, to the said receivers, and that the said receivers do hold the said assets of said Bank, subject to the future order of this Court.

(Extract from the minutes.)

DISTRICT COURT OF THE UNITED STATES, DISTRICT OF LOUISIANA.

I certify that the foregoing are true and correct copies of the originals on file and of record in this Court. Witness my hand and the seal of our Court, at New Orleans, this 8th October, 1870.

[SEAL.

CHARLES CLAIBORNE,
Clerk.

Per N. LOEW,
Dp'y Clerk.

"D."

Order as to expenses extract from minutes of 25th June, 1870.

JOHN THORNHILL AND AL.
vs.
BANK OF LOUISIANA. } No. 1056.

On motion of Thomas Hunton, attorney for the receivers herein, and on suggesting that certain expenses have heretofore been incurred by the persons in charge of the assets of the Bank, to wit, for the rent of the building in which the books and assets of the Bank were lodged, and also for charges of the Register in Bankruptcy, and his clerks, incurred under orders of this Court.

It is now ordered that the said Receivers be, and are authorized to pay out of any funds which may be realized by them the said rent, expenses, and charges, and such other reasonable expenses and charges which may be incurred by them in discharge of their duties as Receivers.

[SEAL.] True copy,
October 14, 1870.
N. LOEW.
Dp'y Clerk.

"E."

DISTRICT COURT OF THE UNITED STATES OF AMERICA,

FOR THE DISTRICT OF LOUISIANA,

Holding Sessions in the City of New Orleans.—February term, A. D., 1870.

New Orleans, Friday, May 13th, 1870.

Court met pursuant to adjournment. Present, the Honorable E. H. Durell, Judge.

JOHN THORNHILL AND AL., v. BANK OF LOUISIANA. No. 1056.	SARAH WILLIAMS, v. BANK OF LOUISIANA. No. 1066.

On motion of Thomas Hunton, attorney for plaintiffs petitioning creditors, and on suggesting that the 15th of June, proximo, has been fixed for the meeting of creditors herein, and on further suggesting that the marshal as messenger, declines to issue notices of said meeting to the creditors as required by law, and on further showing that the inventory taken herein shows an amount of cash received by him under an order of this court exceeding $7,000, which is ample to cover all his reasonable costs for issuing said notices, and further suggesting that a further delay in issuing said notices will be attended with great expense and inconvenience to all parties in interest—it is ordered that the marshal S. B. Packard, as messenger, do forthwith proceed to issue said notices, as required by law, and that his cost be paid out of the funds of the Bank.

CLERK'S OFFICE: true extract from the minutes.

NEW ORLEANS, *June* 30, 1870.

N. LOEW,
Dp'y Clerk.

"H."

JOHN THORNHILL, *et al*
vs.
THE BANK OF LOUISIANA. } No. 1056, In Bankruptcy.

The petitioning creditors being satisfied that the injunction in this case is operating a serious detriment to the interests of the creditors of the Bank, it is hereby agreed that the injunction be discharged so as to authorize the acting Commissioners of the Bank to take all legal measures for the preservation and collection of the asssets of the Bank, without prejudice, however, to the interests of the Complaining Creditors or the succession of W. Bogart.

"Signed," THOMAS HUNTON.

CLERK'S OFFICE: A true copy of the original on file and of Record in this office.

NEW ORLEANS, *June* 23, 1870.

CHARLES CLAIBORNE.

[SEAL.] *Clerk.*

Supreme Court of the United States.

P. H. MORGAN *et al.*, commissioner,
vs.
JOHN THORNHILL *et al.*
No. 218.

BRIEF IN OPPOSITION TO THE MOTION TO ENFORCE SUPERSEDEAS, &c.

It is submitted that the motion to enforce the supersedeas in this case, &c., ought not to be granted for the following reasons:

There is no valid supersedeas in the case.

The material facts on this point are as follows:

The decree of Judge Woods, the circuit judge, appealed from was rendered March 2, 1870.

Application for an appeal was made to Judge Woods March 7, 1870, which was refused the same day.

Application for appeal was made to his honor Judge Swayne March 24, 1870, and appeal granted of same date, with order for a supersedeas.

Explanatory order of Judge Swayne made April 14, 1870, setting forth that

"In granting an appeal herein to the Supreme Court of the United States with a writ of supersedeas, * * it was not intended that the order should operate as a supersedeas, unless the order of appeal and bond and writ of supersedeas should be lodged in the clerk's office within the time prescribed by law." (Transcript p. 90.)

The application to Judge Woods for an appeal has, we sub-

mit, no legal effect in this case, because the application was refused.

The question, whether the appeal operates as a supersedeas must be determined by the application to Judge Swayne.

The application to Judge Swayne was an original application, and has no connection with the previous application to Judge Woods. This application to Judge Swayne was not made within the ten days required by law, so as to operate as a supersedeas. It is clear, therefore, that the application to Judge Swayne for an appeal cannot, as not being within the ten days, operate as a supersedeas.

In Saltmarsh *vs.* Tuthill, (7 Howard R., p. 387,) an appeal was taken in a common-law case, instead of a writ of error, and after the lapse of ten days the defendant, discovering his mistake, sued out a writ of error. It was held that the writ of error was sued out too late to operate as a supersedeas.

The court in this say: "Nor is there any equitable power in the circuit court to stay the execution, upon the ground that a mistake has been made as to the manner or time of removing the case. And it is *immaterial in this respect whether it was the mistake of the party or the court.* For this court has never deemed the tribunals of the United States authorized to dispense with the express provisions of the acts of Congress regulating appeals and writs of error upon any equitable ground."

So, in this case, it is immaterial whether Judge Woods made a mistake or not in refusing the first application for an appeal. The fact is, the appeal was not perfected within the ten days, and so cannot operate as a supersedeas.

So in Selsby *vs.* Foote, (20 Howard R., p. 295,) the court say: "The appeal is a supersedeas only in cases where it is taken, and a copy lodged for the adverse party within ten days after passing the decree complained of."

No copy for the adverse party was lodged within ten days. The bond for appeal, originally lodged March 7, 1870, was withdrawn. (Transcript, p. 84.) It was not submitted to

Judge Swayne until March 20th, 1870, and could not have been approved by him until that date.

In Adams *vs.* Law, (16 Howard's Rep., p. 148,) the Supreme Court say: "The appeal *must* be perfected within the ten days after the decree was entered, to operate as a supersedeas." In this same case, the court further say: "where the appeal operates as a supersedeas, it *must* be brought *strictly within the provisions of the law.*"

In Hudgins *et al. vs.* Kemp, (18 Howard,) C. J. Taney, delivering the opinion of the court, says: "Certainly the appeal did not operate as a supersedeas. The security was given and *approved* long after the term limited by the act of Congress."

So, in this case, the security was approved and the appeal allowed after the ten days.

It appears also that the citation was not served in this case until the 26th of March. (Transcript. p. 90.)

This, we submit, is conclusive that the appeal cannot operate as a supersedeas. (City of Washington *vs.* Dennison, 6 Wallace's R., p. 495.)

To operate as a supersedeas, the appeal must be perfected within the ten days (Sundays excepted) of rendering the decree. A decree is perfected by application to the judge, approval by the judge of the bond, and signing of the citation by the judge, and its service on the opposite party or their counsel, (unless the decree is taken in open court, when relation is dispensed with.) In this case none of these essential requisites were done within the ten days.

We submit, then, the appeal cannot operate as a supersedeas.

If the appeal does not operate as a supersedeas, then the motion now made to enforce the supersedeas, &c., falls to the ground. The motion to enforce the supersedeas necessarily proceeds upon the assumption that there is a subsisting supersedeas. But we have shown that this assumption is unfounded. The Hon. Judge Swayne, by his supplementary order in this case, of April 14, 1870, (Transcript, p. 90,) leaves the question open whether the appeal in this case operates as a supersedeas or not.

In the Supreme Court of the United States.

P. H. MORGAN *et al.*, commissioners, appellants,

vs.

JOHN THORNHILL, GEORGE S. THOMPSON, ISADORE NEWMAN and SARAH WILLIAMS.

No. 218.

It is submitted that the appeal in this case should be dismissed on the following grounds:

1. Because the decree appealed from was rendered by the circuit judge by virtue of the special power conferred on the circuit court or the judge thereof to exercise "a general superintendence and jurisdiction of all cases and questions arising under" the bankrupt act, conferred by the 1st section of said act to, be exercised by the said circuit court or the judge thereof, "in term time or vacation." From which class of decree no appeal lies.

By reference to the bankrupt act, (14 Stats. at Large, p. 518,) it will be seen that, by the 2d section of said act, the circuit court is invested with "a general superintendence and jurisdiction of all cases and questions arising under this act; and, except when special provision is otherwise made, may, upon bill, petition, or other process of any party aggrieved, hear and determine the case in a court of equity. The powers and duties hereby granted may be exercised either by said court or by any justice thereof in term time or vacation."

By the 8th section of the bankrupt act it is further provided:

"That appeals may be taken from the district court to the

circuit courts in all cases in equity, and writs of error may be allowed to said circuit courts in cases at law."

In defining the nature of the revisory power of the circuit court, under these two sections of the bankrupt law, we must first understand the extent of the jurisdiction conferred by the 8th section of the bankrupt act, authorizing appeals from the district court. When we have fixed the extent of the jurisdiction in regard to appeals under the 8th section of the act, we can readily comprehend the extent of the jurisdiction confered on the circuit court by the 2d section of the act, as hereinbefore cited.

The 8th section, regulating appeals, makes no change in the general law of appeals, except in reference to the amount and time within which an appeal must be taken, in which it is less favorable than the general law on regulating appeals.

An appeal, therefore, from the district court can only be taken to the circuit court in the cases in which it can be taken ordinarily; that is, it must be taken from a final decree of the district court.

In all other cases where the circuit court acts in matters of bankruptcy, it is by virtue of the special, comprehensive, and almost universal power of superintendence conferred by the 2d section of the act.

By the 2d section of the act, the circuit court has a general "superintendence of all cases and questions arising under" the bankrupt act. The only exception to this general jurisdiction of superintendence is in the case of appeals and writs of error.

It is submitted that the cases in which an appeal lies to the Supreme Court of the United States under the bankrupt act are necessarily limited to such final decrees made in the circuit court as have been made in cases brought there by appeal as originating there.

The act provides:

"In cases arising under this act no appeal or writ of error shall be allowed in any case from the circuit courts to the Supreme Court of the United States, unless the matter in dispute exceeds $2,000."

This case did not come into the circuit court by appeal from the district court, nor did it originate in the circuit court. It was the result of an application to the circuit judge, under the special powers of superintendence given him by the 2d section of the bankrupt act. The matter was brought before the circuit judge by petition, invoking the special revisory jurisdiction of the circuit judge.

It is a familiar principle of law, that the appellate jurisdiction of this court does not include a decree under a law conferring a new and special jurisdiction, in which no remedy by appeal is granted.

United States *vs.* Nourse, 6 Peters R., pp. 470, 493.

The decree or order appealed from in this case was made under a law conferring a new and special jurisdiction on the circuit judge.

From the exercise of this special jurisdiction no appeal is given:

And here we would remark, as this court exercises its appellate jurisdiction under the acts of Congress, the burden is on the appellants to show that an appeal lies in their case.

It is to be noted in this case that the general superintendence granted to the circuit judge by the 2d section of the bankrupt act is to be exercised by him in court or at chambers.

This is a controlling fact, to show that no right of appeal was intended to be given from the decisions of the circuit judge in the exercise of this power of superintendence.

The exercise of the appellate power of this court is confined almost exclusively to the final judgments or decrees of the circuit court rendered in term time.

The Supreme Court, in the case of the United States *vs.* Nourse, (6 Peters R., p. 434,) commenting on the fact that in the case then before the court the judge of the court below was authorized to act at chambers, say: "From a decision of the district judge *out of court*, how could the Government appeal to the circuit court?"

The order or decree appealed from in this case was made by the judge out of court.

According to the general law regulating appeals, no appeal can be taken from a decree rendered out of court. The fact that the order or decree appealed from in the case was made out of court is conclusive, we submit, to show that no appeal lies from it.

2. The decree rendered in this case is not a final decree, and, not being a final decree, no appeal lies from it.

The right of appeal granted by the 8th section of the bankrupt act is the ordinary right of appeal regulated by existing law. It can only be from a final decree. The decree in this case is not final, it is only interlocutory.

Final decrees are, according to our practice, rendered in court. The decree in this case was rendered out of court. Only interlocutory decrees are rendered out of court.

C. CUSHING.

Supreme Court United States.

P. H. Morgan et al, Commissioners of Bank of Louisiana
vs.
John Thornhill et al, Petitioning Creditors.
} No. 218.

BRIEF OF P. PHILLIPS.

The Bank of Louisiana was incorporated by the State of Louisiana in the year 1824.

Certain occurrences of the civil war greatly crippled its resources, and it became unable to comply with the requisitions of its charter.

In 1868 the Attorney General of the State filed a proceeding in the Sixth District Court against the bank to forfeit its charter, and on the 20th May, 1868, the following judgment was rendered: "It is ordered and decreed that the charter of the Bank of Louisiana, an incorporated institution and body politic under the laws of the State, be declared forfeited, null and void; that the said corporation be dissolved, and that its affairs be liquidated according to law." p.

These proceedings were had in virtue of an act of the Legislature entitled an "Act to provide for the liquidation of banks," approved 14th March, 1842, and under the 9th section of said act the appellants were appointed commissioners to liquidate its affairs, who duly qualified and entered upon the discharge of their duties.

About a year subsequent to this transaction, to wit: on 20th May, 1869, petitions were filed in the District Court

by the present appellees praying that the said bank and said commissioners be declared bankrupt.

The allegation against the Bank was that it had suspended payment of its commercial paper, and against the commissioners that they had, within six months prior to the filing of the petition, made payments to certain creditors.

The District Court issued several injunctions, set forth in Exhibit A, filed with this application, and on 11th January, 1870, decreed the said Bank to be a bankrupt.

On 22d January, 1870, a petition for review of these proceedings was filed in the Circuit Court, and on the hearing the Circuit Judge affirmed the action in the District Court, holding that the act of 1842 was suspended by the bankrupt act, and that the proceedings in the Sixth District Court, under whose judgment the charter of the Bank was dissolved and the commissioners appointed, were absolutely void for want of jurisdiction.

An appeal was immediately applied for and bond tendered, but the Judge refused to allow an appeal on the ground that the law did not sanction it. He, however, approved the bond, and ordered his action to be entered of record.

An appeal was however granted by one of the justices of the court, and the bond approved, and supersedeas directed to be issued, the appeal having been prayed and the bond approved within the ten days from the rendition of the decree.

The District Judge, however, in disregard of this appeal and supersedeas, to wit: on 25th March, 1870, and while sitting in the *Circuit Court*, granted a motion directing the marshal to take possession of the assets of the Bank in the hands of the commissioners.

Application was then made to Judge Bradley, holding the Circuit Court, to enforce the supersedeas of the appeal and to vacate this order.

His opinion is to be found in exhibit "B," together with his order annulling all proceedings in the Circuit and District Courts subsequent to 21st January, 1870, the date of the injunction granted by Judge Wood on the petition for review.

But this did not arrest the action of the District Judge. Shortly after Judge Bradley had left the city of New Orleans, a motion was made for the appointment of Receivers, Exhibit C, and on the 22d June this motion was granted, receivers appointed, and Morgan and the other commissioners were commanded to deliver into the possession of the Receivers all the assets of the Bank.

On 25th June a further order was made authorizing said Receivers to pay out of the funds of the Bank all sums necessary to pay rent, expenses, and charges by them incurred or to be incurred in the discharge of their duties as Receivers.

There are two motions now made, one by the appellants to set aside the orders of the District Court made subsequent to the appeal as also to suspend the operation of the injunctions made prior to the appeal; the other motion is by the appellees to dismiss the appeal upon the ground that no appeal lies to this court from a decree of the Circuit Court exercising special jurisdiction by petition of review under 2d section of the Bankrupt act.

MOTION TO DISMISS.

It was decided that under the Bankrupt act of 19th August, 1841, there was no appeal to this court. But this decision rested entirely upon the construction of its various provisions showing that its proceedings were to be conducted in a *summary manner*. The jurisdictional clause declared that they were to "*be exercised summarily in the nature of summary proceedings in Equity.*"

The Chief Justice, in the case of Nelson vs. Carland, which came to this court on a certificate of *division*, said

that the act of 1802 did not apply "*to the peculiar and summary jurisdiction directed* to be exercised in cases of Bankruptcy."

1 Howd., 265.

In Exparte Christie, Judge Story, in reference to the same matter, says: The 10th section requires a distribution of assets as often as once in six months, and a final settlement in two years, and he adds: "Congress has the sole right to say what shall be the forms of proceedings either at law or in equity, and in what cases an appeal shall be allowed. Because the proceedings are to be in the *nature of summary proceedings in equity*, it by no means follows that they are not entirely consistent with the principles of justice."

3 Howd., 317.

There are no such provisions in the present Bankrupt act. On the contrary, the most ample provisions are made for appeals and writs of error from the District to the Circuit Court, (8 sec.,) while by another section the Circuit Court is vested with a general superintendence and jurisdiction of all questions and cases arising under this act; and except when provision is otherwise made may, upon bill, petition, or other process of any party aggrieved, hear and determine the case in a Court of Equity, and these powers and duties may be exercised either by the said Court or any justice thereof in term time or vacation." 14 Stats., 518.

The revisory power of the Circuit Court was thus, in one form or another, extended over the whole matter confided to the jurisdiction of the District Court, and if the act had been silent as to an appeal to this Court from the Circuit Court it would have been maintainable under the acts of 1789 and 1803.

Ex-parte Zellinger, 9 Wall, 246.

But the act is not silent. The 9th section declares that no appeal or writ of error shall be allowed in any case

from the Circuit to the Supreme Court unless the matter in dispute shall exceed $2,000.

The 10th section authorizes this Court to make rules to regulate the practice and procedure upon appeals.

It is therefore evident that Congress assumed that appeals would be taken from the Circuit Court and contented itself with alone regulating the amount which gave the jurisdiction.

If, therefore, the decree is final and the amount in controversy exceeds $2,000, the appeal is well taken.

The District Court, by its judgment, had taken from the administrators appointed by the laws of the State an estate worth many hundreds of thousands of dollars. The administrators had a personal interest in their salaries ot $3,000 per annum, of which they were deprived. This judgment was, by the decree of the Circuit Court, affirmed, and the rights set up in the petition of Review were denied.

A decree which changes and transfers the right of property in litigation is a final decree, for if otherwise irreparable injury would be incurred before redress could be had.

Dean v. Nelson, improperly printed Thompson v. Dean, 7 Wall, 345.

It is urged by Mr. Cushing that no appeal lies in this case because the matter was "before the Circuit Judge by petition invoking the special revisory jurisdiction."

That is, though it be admitted that the decree is final, and the amount in controversy exceeds $2,000, no appeal lies because the case was not carried from the District Court in the form of an appeal or writ of error under the 8th section.

But it is a mistake to suppose that the appellate power is confined to any particular form. It is ordinarily exercised by appeal or writ of error. In many cases under statute it is done by a certificate of division—or the Legislature may provide that it should be exercised by certiorari,

petition for review, or by any other process deemed convenient.

It is further objected that no appeal lies when this special jurisdiction is exercised, because it is provided that the decree may be rendered "by the Court or by any Justice thereof in term time or *in vacation.*"

Terms of Court are the arbitrary creations of Statute, which may be modified or abolished by Statute.

Is it any less the exercise of judicial power to decide a case in vacation? If this judicial power be exercised by a subordinate tribunal, what is there in the nature of things which should free it from the supervision of the Superior Court. If there be a lack of formality in the discharge of judicial functions in vacation it would seem to be more, not less, important that such proceeding should be reviewed by the Superior Court.

Much reliance is placed upon an expression wrenched from the opinion in United States v. Nourse. "From a decision of the District Judge, *out of Court*, how could the Government appeal to the Circuit Court."

The case before the court was under the act of 15th May, 1820, authorizing the issue of a distress warrant against a defaulting officer. The United States claimed the right of appeal under the provisions of the act of 1803.

The court say, "this act authorizes an appeal from a decree or judgment of the District Court rendered in the ordinary exercise of its jurisdiction, which is limited to cases at law and of admiralty and maritime jurisdiction. It may be admitted that an enlargement of the powers of the District Court by giving a new remedy, would *not require a special provision to secure the right of appeal;* but if a new jurisdiction be conferred and a *special mode be provided by which it shall be exercised*, it is clear the remedy cannot be extended beyond the provisions of the Act."

The court then decides that by reason of these special provisions the Government had no right to take an appeal and then adds: "From a decision of the District Judge out of Court, how could the Government appeal to the Circuit Court. It is no answer to this question that the decree under consideration was made in Court. The right to an appeal cannot depend upon this contingency, and the objection to the appeal is as strong in the one case as in the other."

This is said by way of illustration or argument; the Court had already decided the point in issue, to wit: that by the true construction of the act of 1820, the Government was excluded from the right of appeal.

It surely will not be maintained that Congress has not the power to authorize an appeal from a decree rendered in vacation. Whether the right of appeal exists in a given case is, therefore, one purely of statutory construction, and the question now before the Court is whether the powers conferred by the 2d section of the Bankrupt Act in the Circuit Court, are withdrawn from the supervisory jurisdiction of this Court because of the provision that "the powers and duties hereby granted may be exercised either by said court, or by any justice thereof in term time or vacation."

The 8th Section provides that appeals may be taken from the District to the Circuit Court in *all cases in Equity*, and writs of error in cases at law where the amount in controversy exceeds $500. Appeal is also allowed to any *creditor* whose claim is rejected, or to an *assignee* dissatisfied with the allowance of a claim.

It is tacitly admitted that the present appeal would be sustained if the case had originated under the 8th section and been carried to the Circuit Court, and yet in the large jurisdiction conferred by the 2d section, it is maintained that the design of Congress was to exclude the appellate jurisdiction of this court.

The powers conferred by this section are directed to be exercised as "a Court of Equity," and because it is said that this Court of Equity may determine causes in "vacation," therefore it is demonstrated that Congress intended there should be no appeal whether the decree be made in term time or vacation.

Now it is very certain that the petition of Review filed in the Circuit Court, presented a case under the act for adjudication. The jurisdiction to hear and determine it is not contested.

After providing in the 2d and 8th sections for the exercise of the appellate power of the Circuit Court, the 9th section declares as follows:

"That in cases arising under this act no appeal or Writ of Error shall be allowed in any case from the Circuit Court to the Supreme Court, unless the matter in dispute should exceed $2000."

The affirmative form of this proposition is that an appeal or writ of error shall be allowed in cases arising under this act where the amount in controversy exceeds $2000.

This would include all cases, and if so important a portion of the Circuit Courts jurisdiction was intended to be excepted, we should expect to find a special exclusion.

The petition in this case was filed in the Circuit Court and addressed to the Judges of said Court. The Circuit Judge, to serve his convenience, ordered it to be heard in vacation, but his action on the petition was filed in this Court, and the Record is as formal as if the case had been determined in Term time.

We insist that there is nothing in the Statute which warrants even a doubt as to the supervisory power of this Court over such a decree as is now under consideration.

MOTION FOR SUPERSEDEAS.

Admitting the right to the appeal, it is denied that it operates as a supersedeas.

The appeal was prayed for, and approved bond filed, within ten days from the rendition of the decree. The Circuit Judge refused the appeal but the same was subsequently and after the expiration of the ten days allowed by a Judge of this Court.

The appellants did what the statute required, and the action of the Judge or his non action, could not deprive them of a statutory right. The appeal that was allowed was the appeal which the parties had asserted under the statute, and the application for it was to enforce their rights under the statute.

The whole argument of the brief filed by Mr. Cushing, rests upon the assertion that the appeal was not taken within the ten days.

The decisions of the Court are numerous to the effect that when a party has complied with the requirements of the statute, this Court will itself direct the supersedeas.

In *ex parte* Milwaukie, the Circuit Judge would not allow the appeal bond to operate as a supersedeas, yet on application to this Court long after the expiration of the ten days, this Court overruled the action on the bond and directed a supersedeas on filing a bond within thirty days.

5 Wall. 188.

When the appeal is taken and bond filed within the ten days, this Court we maintain *has full power to stay any proceedings in the subordinate Courts which may be necessary to secure the rights of the appellants pending the appeal.*

To give the party the right to a suspensive appeal and yet to hold there was no power in the Court to arrest proceedings which would render his appeal fruitless would be a mere mockery.

In conferring the appellate power the 13 section couples with it the power to issue a mandamus to the subordinate courts in cases warranted by the usages of law.

In *ex parte* Craine the power of this Court is thus described. "A mandamus to an inferior Court is in the nature of appellate jurisdiction. In England it is awarded by the Chancellor, but in the United States it is expressly conferred on this Court which exercises *both common law and chancery powers;* is invested with appellate powers, and *exercises extensive control over all the Courts of the United States.*"

5 Pet. 190.

But lest mandamus might not be under the usages of law a full control, the 14th section gives the additional authority to issue "*all other writs* which may be necessary to the exercise of its jurisdiction agreeable to the principles and usages of law."

The control which this Court has over the proceedings in a cause pending an appeal is the same as is exercised by the High Court of Chancery and the House of Lords. "The principles and usages of law" referred to by the statute are those which obtain in England, from whence the body and practice of our chancery system is derived.

In Huguenen *vs.* Basely, application was made to the House of Lords for a stay of proceedings under the decree. Lord Walsingham from the Lords committee reported—that by the ancient practice appeals to the House of Lords operated as a stay of proceedings in Courts of Equity, but that for a very long course of years the practice had been otherwise except in cases in which their judicial discretion has induced them upon the application of parties interested to *stay or modify* such proceedings on account of such appeals. The practice is therefore declared to be that appeals do not *proprio vigore* operate a suspension—but the cause is to be proceeded in *unless the Court of Equity, or the House of Lords shall make an order to the contrary.*

15 Ves., 184.

In New York after an appeal, the party in whose favor the decree is made, applies to the Chancellor for leave to proceed. It is held to rest "in the discretion of the Court to determine when and to what extent the mere fact of filing an appeal shall be a supersedeas to all further proceedings."

"The Court exercises a discretion so far only as to prevent *impending injury* or *actual abuse* by the intermediate delay."

3 John Chan., 162–3.

In Maryland this power of the House of Lords to suspend proceedings is said not to be an arbitrary one, but is incidental to its judicial character. That it is necessary to the appellate court to preserve the usefulness of its appellate jurisdiction. That, if it were otherwise, cases might arise in which the appeal would be but a shadow pending which the substance might be lost.

While adhering to the English rule that the appeal does not of itself suspend the decree they also adopt the necessary incident that pending the appeal, proceedings may be stayed either by order of the chancellor *or by order of the appellate court on such terms as the particular circumstances of such case may require.*

Thompson v. McKim, 6 Har. & John, 333.

Again when the Court is asked to take a step in a cause after an appeal taken and bond given, it is absolutely necessary to be shown that in no contingency it can prove injurious to the appellant.

Ohio Life Ins. Co. v. Wenn & Ross, 4 Md. Chan., 267–70.

The following case will show how the subject is treated in England:

Lord Mount Cashel filed his petition against Lord

O'Neill, and obtained an injunction against his cutting timber trees on a certain lease-hold estate.

On filing the answering affidavit, the Master of the Rolls gave leave to the parties to try their right by an action at law. This was done, and there was judgment at law in favor of O'Neill, who then applied for a dissolution of the injunction, which was granted.

The High Court of Chancery was then appealed to, to vary this order, and continue the injunction until final judgment was given in the case, which was *in transitu* to the House of Lords.

The Court admitted that so far as it was concerned, there was a final determination in favor of O'Neill, and that it was a novel question whether a Court of Equity could suspend the rights of a party successful at law, though the authorities were numerous as to the power of the Court to suspend the execution of its own Decrees pending an appeal.

The Court concludes that such an application is within the discretion of the Court, that in coming to the conclusion the circumstances which weighs most is, on which side the balance of inconvenience, or the balance of danger, most inclines.

After a full consideration of all the facts of the case the injunction was ordered to be continued. Vol. 3, Irish Eq. Rep., N. S., p. 619.

It is unnecessary to multiply authorities to show that where not controlled by Statute, Courts of Equity or the Appellate Court may exercise a discretion, to stay or modify the proceedings pending the appeal so as to subserve the substantial ends of justice.

In the case before us the Statute declares that a stay of proceedings should *only* be had when the appeal and bond are filed within ten days from the rendition of the decree.

This having been done, this Court is authorized by mandamus or any other writ "agreeable to the principles and usages of law," to give such direction to the Court below "as the particular circumstances of the case may require."

The circumstances of this case are extraordinary. *Twelve months* after the Bank of Louisiana had *ceased to exist* by judgment of forfeiture of its charter by a Court of competent jurisdiction, it is declared by the District Court to be bankrupt, and its assets are directed to be taken from the hands of those who by law had been appointed to administer its effects.

When death occurs *after the issue of the warrant*, proceedings in Bankruptcy may be continued.

The English act allows the proceeding to be continued if the bankrupt die *after adjudication*, so that death between the petitions and adjudication abated the proceedings.

Humphrey v. Scoop, 13, 2 B, 509.

Exparte Hall 1, De Gex, 332.

James Bankruptcy, p. 30.

Besides the Statute requires that the act on which the Bankruptcy is to be declared must have occurred *within six months* of the filing of the petition.

The jurisdiction of the District Court of the State to forfeit the charter and thus put an end to the existence of the Bank and to administer its assets for the benefit of its creditors under the State law, having been exercised, it was incompetent for the District Court in Bankruptcy in any wise to assail or interrupt these proceedings.

This is fully decided in the cases of Hugh Campbell and Burns by Judge McCandless, who announces the concurrence of Judge Grier.

1 vol. Am. L. T., Bank, p. 30 47.

Also by J. MCunn, in Clark v. Beninger, 3 vol. Am. L. T. Bank.

This defunct Bank was by the decree of District Court declared Bankrupt on the 11th January, 1870, and it was ordered that the said Bankrupt should present a schedule of its creditors and an inventory of its estate within 30 days, and that the parties holding any of the property of said Bank surrender the same to the officers of the Court.

Record, p. 16.

Prior to this, to wit, on 17th June and 1st July, 1869, injunctions had been issued arresting an application made by the appellants to the State Court for an order of sale of the assets of the Bank, and prohibiting them from any litigation or interference in respect to said assets.

Rec., pp. 10, 11.

The petition for Review was filed 22d January, 1870, on which an injunction was issued suspending all further proceedings in the District Court and enjoining the Marshal from taking any action under the judgment. Rec. p. 3.

On the 2d March, 1870, the Circuit Judge dismissed the petition, affirmed the judgment of 11th January, 1870, and rescinded the injunction that had been granted. Rec. 78.

Notwithstanding the suspensive appeal taken from this decree, the District Judge by its order directed all the assets of the Bank to be taken by the Marshal from the Commissioners.

An application was then made to his Honor, Judge Bradley, holding the Circuit Court, who, on the 7th June, 1870, decreed " that all orders made in the cause by the Circuit or District Court since the 21st January, 1870, the date of the injunction granted by the Circuit Judge, are hereby vacated and annulled, and it is ordered that all

things be restored to the condition in which they stood at the date of said injunction."

In the opinion delivered by Judge Bradley, he says:

"The question is, whether the allowance of the appeal in this case is to relate back to the time when the original application was made for an appeal to the Judge of the Circuit Court? We are of opinion that it does; that this party has done everything that in him lay to entitle him to a suspension of proceedings. At any rate, in the Circuit Court, which has control over its own process and proceedings, we can do that which the Supreme Court could require us to do by writ of supersedeas, whatever might be the disability or incapacity of a Judge at Chambers, we are under no such embarrassment. We can direct proceedings to be suspended to the same extent that the Supreme Court would direct them to be suspended if it were applied to."

Exhibit B, pp. 16, 17.

As soon as Judge Bradley had left the city of New Orleans, a petition was filed for the appointment of Receivers, and on the 22d of June, 1870, an order was made appointing Miltenberger and Norton Receivers, and directing the Commissioners (appellants) to "deliver possession of the assets of the Bank of Louisiana into the hands of said Receivers, and that the said Receivers do hold the said assets subject to the future orders of this Court."

This was followed by a further order on the 25th June, 1870, authorizing the Receivers to pay out of the said assets the expenses and charges incurred by them in discharge of their duties as Receivers.

Exhibits pp, 22, 23.

Under this order the Commissioners of the State of Louisiana have been divested of the assets confided to their

administration by the judgment of the State Court twelve months prior to the institution of any proceedings in Bankruptcy. They assert with confidence that these proceedings are in violation of law; they have appealed to this Court to vindicate their rights, and they ask that pending their appeal, they may be restored to the control of the affairs of the Bank and be permitted to take such measures in reference thereto as will preserve the assets from waste.

P. PHILLIPS,

Of Counsel for Appellants.

7 Error 278

Wm. Dan. Clifford

United States Supreme Court.

No. 450.

P. H. MORGAN, ET ALS.,

Commissioners of the Bank of Louisiana, Appellants,

vs.

JOHN THORNHILL ET ALS., *Appellees.*

Appeal from the Circuit Court of the United States for the District of Louisiana.

BRIEF OF APPELLANTS,

ON MOTION TO DISMISS THE APPEAL.

Simmons & Co., print, 56 Camp street, N. O.

Supreme Court of the United States.

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vs.

JOHN THORNHILL ET ALS., Appellees.

Appeal from the Circuit Court of the United States for the District of Louisiana.

Brief of Appellants, on motion to Dismiss the Appeal.

STATEMENT OF THE CASE.

There are two statements of facts filed in this case, one on page 20 and the other on page 59 of the Record. (The references in this brief are to the pages of the printed transcript.)

These statements and the documents annexed to them and referred to, give all the facts of the case.

They are briefly as follows:

The Bank of Louisiana was incorporated by act of the Legislature of that State, approved April 7, 1824. See Act, pp. 21 to 33 of the Record.

On the 20th May, 1868, at the suit of the State, through its attorney general, the charter of the Bank was declared forfeited and the corporation dissolved by judgment of the Sixth District Court of New Orleans, which, it is admitted, was "a Court of general jurisdiction," and which has been so decided by this Court in 7 How., 160.—See petition and judgment of Sixth District Court, pp. 60, 61 and 62.

Under this judgment commissioners were appointed and qualified as the law required, who assumed the administration of the assets of the Bank, which came into their hands by virtue of law and the judgment of the Court, and proceeded to liquidate the affairs of the bank according to the laws of the State, until their proceedings were arrested by the institution against them of these proceedings in bankruptcy, on the 20th May, 1869, just one year after the forfeiture of the charter.

On that day the petition of John Thornhill et als. was filed, alleging they were "creditors of the Bank "of Louisiana, and of P. H. Morgan, C. E. Willoz and "J. F. Irvine, the acting commissioners of the said "Bank *in liquidation*. * * * That the said corpora- "tion, the Bank of Louisiana, being a banker, and the "said commissioners, did each of them commit an act "of bankruptcy. * * * That said Morgan, Willoz "and Irvine, acting as commissioners of the said Bank, "are proceeding to liquidate the affairs of said Bank

"under a pretended authority from the said Sixth Dis-
"trict Court, and *who are in charge of all its assets.*
"* * * Wherefore, your petitioners pray that the
"said Bank of Louisiana, and the said commissioners,
"P. H. Morgan, C. E. Wilioz and J. F. Irvine, *in their*
"*capacity of commissioners* aforesoid, may be declared
"bankrupt, *and that a warrant may be issued to take*
"*possession of the estate of said corporation in the hands*
"*of said commissioners.*" See Petition, pp. 49 to 52.

The order to show cause in this petition (Form No. 57) was directed to and ordered to be served on said commissioners only.—page 52.

On the 3d June a supplemental petition was filed, which was served only on L. F. Genres, as the *last President* of the bank.—pp. 53 and 54.

The case came on for hearing on the 15th June (p. 54), when exceptions were filed by the commissioners. pp. 54 and 55.

The Court considered these exceptions as an answer, and "ordered the case to be proceeded with for trial "on the merits, reserving to the commissioners the "right to file an answer setting forth more fully their "grounds of defence."—p. 55.

"The case was continued over to the 21st, when an answer was filed by the commissioners," p. 56; and

"The case was tried and submitted on the 21st of June."—See Rec., p. 58.

On the 17th June, a petition was filed by Thornhill

more than eight months after the forfeiture of its charter.

The petition of Mrs. Williams, it will be recollected, was not filed till the 11th of December, 1869, over seven months after the bankrupt proceedings had been commenced by Thornhill, and nineteen months after the forfeiture of the charter.

Under General Order No. 15, the petition of Thornhill et als. should therefore be "first heard and tried."

On the 11th January, 1870, the decree of bankruptcy was rendered by Judge E. H. Durell, adjudging the bank a bankrupt, and ordering "that the parties "holding any of the property of the said bank, sur-"render the same to the proper officers of the Court." See decree, on p. 70.

The *Opinion* of the Court in this case is published in the Bankrupt Register, vol. 3, page 110.

Proceedings were immediately instituted in the Circuit Court by *Petition of Review*, filed by the commissioners, alleging that the orders and judgment rendered by the District Court were erroneous and illegal, and praying that they be set aside and rescinded, and that petitioners be allowed to proceed with the execution of the trust conferred on them by law.—Rec., p. 2.

The case was tried in the Circuit Court on the *two statements of facts* above referred to—one in the case of John Thornhill and others, the other in the case of Sarah Williams.

The first is on page 20.

This refers to and makes part of the statement of facts, the "Appendix" to the brief of Cooley & Phillips, which will be found in the printed record, pages 43 to 59.

It also refers to and makes part of the same the charter of the bank.—pages 21 to 43.

The second statement of facts (in the case of Sarah Williams) is on page 59.

This also makes the charter of the bank, marked A. A., part of it (on page 21).

The record of the suit in the Sixth District Court of New Orleans, entitled The State of Louisiana vs. The Bank of Louisiana, No. 21,914, is also made part of the statement. It is marked B. B., and is on pp. 60, 61 and 62.

Document C. C. on pp. 62 and 63 is also made part, as a "correct statement of the payments made by the "petitioners (the commissioners), which are alleged in "the petition of Mrs. Sarah Williams."

Document D. D. on pp. 63 to 70, being a transcript of the proceedings in the case of Mrs. Williams vs. Bank of Louisiana in the U. S. District Court, is also annexed to and made part of the statement of facts.

On the 2d March, a decree was rendered by the Circuit Court affirming that of the District Court. See Rec., pp. 73 to 79.

This appeal was thereupon taken by the petitioners to the Supreme Court of the United States.

Counsel for the petitioning creditors and appellees have moved this Court to dismiss the appeal, "for "want of jurisdiction, an appeal to the Supreme Court "in this or the like case, not being granted by any "practice, rule or decision thereof, nor any act of "congress."

ARGUMENT.

Without being able, under this very general and sweeping objection, to ascertain the particular grounds relied on for the dismissal of this appeal,

We respectfully submit the following points for the consideration of the Court.

We are entitled to an appeal to this Court from the decree rendered in this case, under Section 9 of the bankrupt act. This being

A Case arising under that act,

Rules and regulations having been provided by congress for carrying up such appeals,

The amount in dispute exceeding two thousand dollars.

An appeal lies from the adjudication of bankruptcy, regardless of the pecuniary valuation involved.

Finally, we have a constitutional right to an appeal in this case, it being a final decree of the Circuit Court, and not embraced in any of the exceptions established by congress.

Section 9 of the act of 1867 provides, "That in

"cases arising under this act, no appeal or writ of "error shall be allowed in any case from the Circuit "Courts to the Supreme Court of the United States, "unless the matter in dispute in such case shall exceed "two thousand dollars."

Here is an affirmative implication that in all cases in which the matter in dispute does exceed $2000, an appeal or writ of error shall be allowed from the Circuit to the Supreme Court.

Section 10 requires the Justices of the Supreme Court to frame general orders "for regulating the "practice and procedure upon appeals;" and in conformity with this provision, the general order No. 26 provides that "appeals in equity from the Circuit "Court to the Supreme Court of the United States, "shall be regulated by the rules governing appeals in "equity in the Courts of the United States."

Rules and regulations therefore having been provided for carrying up appeals in cases like this, it only remains to inquire whether this is a case arising under the bankrupt act, and whether the matter in dispute exceeds $2000.

It needs no argument to show that this is *a case* arising under the bankrupt law; whether legally cognizable under that act is immaterial, the contestation has arisen and the proceedings have been conducted under that act exclusively. Osborn vs. U. S. Bank, 9 Wheaton, 738 (819–826).

We contend that it is *not* a case *properly* arising under that act—that it is *not* a case contemplated by or coming within the purview of that act, and that it is a misapplication and abuse of the bankrupt law, which does not deal with the dead but with the living. By the forfeiture of the charter and the annulment of the corporate existence of the bank, the bankrupt act lost its subject. Section 12 provides, "If the debtor "dies after the issuing of the warrant, the proceedings "*may be continued* and concluded in like manner as if "he had lived."

Our objections are overruled, and the Court holds it to be a proper case for the application of the bankrupt law, and a decree is rendered putting the property, if not the bank, *in bankruptcy*.

Whether this decision is correct, and whether this is a case properly arising under the bankrupt act, cannot be determined until the final decision on the merits.

Does the matter in dispute exceed Two Thousand Dollars?

In order to answer this question, we must ascertain what the real matter in dispute is.

An examination of the pleadings and proceedings resorted to in this case will, we think, satisfy the Court that the real object of the petitioning creditors was not to obtain a decree adjudging the Bank of Louisiana a bankrupt under Sec. 40 of the bankrupt act, but to

deprive Morgan and others, commissioners, of the possession and control of the assets of the bank, which were in their hands, and which it is admitted amount to more than one hundred thousand dollars ($100,000). See statement of facts, pp. 20 and 60.

Proceedings are instituted by the petitioning creditors against Morgan et als., as commissioners, asking that *they* and the corporation whose affairs they were appointed to liquidate, be adjudged bankrupt. Acts of bankruptcy are charged against both the commissioners and the corporation. Petitioners allege that Morgan and others, acting as commissioners of said bank, and "who are in charge of all its assets, are "proceeding to liquidate the affairs of the said bank "under a pretended authority derived from the said "Sixth District Court." That the payments and acts of administration of the affairs of said corporation by the said Morgan and others, defeat and delay the operation of the bankrupt act, and "give the administra-"tion of the affairs of said insolvent corporation to "the State Court and the commissioners appointed by "said Court." They pray that the bank and the commissioners be adjudged bankrupt, "and that a warrant "may be issued to *take possession of the estate of said "corporation in the hands of said commissioners.*"—pp. 50 and 51.

The order to show cause issued on this petition (form No. 57) *is directed to the commissioners only*, and ordered to be served only on them.—p. 52.

In a supplemental petition, on page 53, they allege "Petitioners *now* aver that the said acting *agents* and "commissioners are representing the bank and administering its assets with the *assent* of L. F. Generes, "the last President, and the last board of directors. "That a judgment was rendered against the bank by "virtue whereof and subsequent proceedings had in "the suit No. 21,914 of the docket of the late Sixth "District Court of New Orleans, the assets, control "and management of the said bank were transferred "to the said acting agents and commissioners."

The order to show cause on this supplemental petition was directed to Morgan et als., as acting commissioners, not as *agents* of the bank.—See p. 54.

Injunctions were also issued directed against them as acting commissioners only.—pp. 56 and 58.

This attempt on the part of the petitioning creditors to change the *capacity* in which Morgan et als. were acting, and held and were administering the property of the bank, shows that their counsel had discovered the dilemma in which they had placed themselves by bringing suits against third persons for the recovery of the assets of the bank before the bank was decreed bankrupt, or finally adjudged to be amenable to the bankrupt law, and by instituting proceedings in bankruptcy against a corporation not in existence. All are combined in one suit; and they endeavor to shape their pleadings so that they may hold good either

against the bank itself, if still in existence, or against its legal representatives, if not in existence.

If the corporation was still in existence, proceedings against it should have been directed against "The President, Directors and Company of the Bank of Louisiana."—See charter of bank, sec. 9, on page 24 of the Record.

But the forfeiture of the charter of the bank, and the capacity in which Morgan et als. received and were administering its assets, are admitted in the statement of facts. See "Appendix," which is made part of statement of facts, page 47 to 49; and also in the petition of Thornhill et als., p. 50, and of Mrs. Williams, pp. 64 and 65.

That the object of these proceedings was as stated above, is evident from the language of Judge Durell. See 3 B. R. 110.

The learned Judge admits the forfeiture of the charter of the bank and appointment of commissioners to liquidate its affairs, "who have now for more than "eighteen months, and for more than one year prior "to the application made here by Thornhill for a "forced surrender, been in possession of and admin-"istering upon the assets of the bank as in case of "insolvency. * * * That Thornhill and others, cred-"itors of the bank, applied by petition to this Court, "sitting in bankruptcy, *for an order requiring* said "bank, its president and directors, and *said commis-*

"*sioners, to surrender all of the assets of the said bank*, "to be administered upon in this Court, *as in a case* of "forced surrender in bankruptcy. * * * The Sixth "District Court of the city of New Orleans *had juris-* "*diction* of the action taken by the attorney general, "*as far as the forfeiture of the charter was concerned*, "but with the decree of forfeiture its jurisdiction "ended. It could not go on and administer upon the "property of the bank." Referring to the argument of counsel, that by the forfeiture of the charter, the bank had become extinct and the corporation was no longer in existence, the District Judge adds, "But this "Court will lay hold of such property wherever it can "find it, and *persons in possession of the same*, whether "claiming in open wrong or under a show of title, *are* "*parties proper to be made defendants* in proceedings of "this character. Were it otherwise, any corporation "might escape the regime of the bankrupt act by a "simple dissolution or surrender of its charter." The Judge nevertheless decrees the bank to be a bankrupt.

Upon the same principle the regime of the bankrupt act could not be escaped by a person committing suicide; and to remove the settlement of a succession from the Probate Court to the Bankrupt Court, it would only be necessary to show that the deceased killed himself, or suffered or procured another to do so, with the intent and for the purpose of defeating the bankrupt law.

Under the insolvent laws of Massachusetts it was held that the Bankrupt Court had no jurisdiction over the property of a debtor which he had left behind him in the State, although he may have moved out of the State expressly to defeat the jurisdiction of the Bankrupt Court. Claflin vs. Beach, 4 Met. 392.

If the jurisdiction of the Bankrupt Court cannot be defeated by the debtor's removal from the jurisdiction of the Court, of what use is the provision in the 40th section, that "if there is probable cause for believing that the debtor is about to leave the district," he may be arrested.

The Circuit Court affirmed the decree of the District Court but, upon quite different grounds. The Court held that the proceedings in the State Court were *null and void*, and that "for all the purposes of the bankrupt act and the liquidation of its affairs thereunder "*the Bank of Louisiana still exists as a corporate body*, "and may be proceeded against as such in bankruptcy. "* * * That the commissioners named by the "Court do not represent the bank; that they were "without legal right or authority to *interfere* in these "proceedings, that they are not aggrieved by the adjudication of the District Court; and that for *these* "*reasons*, if no others, their petition of review should "be dismissed."

We respectfully submit that these two decrees are inconsistent and operate a great hardship upon the commissioners.

They are made parties defendant by the petitioning creditors and cited as such. By the decree of the District Court they are held to be *proper parties defendant* and are decreed to surrender up the property in their hands.

When they present their petition for relief to the Circuit Court, they are informed that they have no right or authority to interfere in these proceedings, and that they are not aggrieved.

If the views of the learned Judges of the Circuit and District Courts are correct, there is no limit to the time within which the settlement of estates of deceased persons and defunct corporations in the State courts may be arrested by proceedings in bankruptcy, and transferred summarily together with all the assets to the Bankrupt Court.

Administrators, commissioners or liquidators may go on for years administering and selling property of estates in their hands, under orders of courts and the laws of the State providing for the settlement and winding up of such estates, and all their proceedings then decreed to be null and void by an adjudication of bankruptcy, rendered on the application of any one dissatisfied with their acts, or interested in getting the administration of the estates out of their hands. Titles to property given by them under orders of the State courts would be decreed worthless, and purchasers holding it "under a show of title," be com-

pelled by these summary proceedings to deliver it up to the Bankrupt Court.

The collection and distribution of assets, and the settlement of estates could thus be prevented for an indefinite period, as is being done in this case.

Had it been the sole object of the petitioning creditors to put the corporation in bankruptcy, and to have the property distributed under the bankrupt law, they would not have waited a year after the corporation was dissolved and commissioners appointed to wind up its affairs under the State laws, and permitted them to go on liquidating the affairs of the bank for twelve months without objection.

The petitioning creditors care nothing for the assets of the bank, nor the interests of its creditors. The insignificance of their claims, (those which are real) being only about $900 in all, forbid the idea that they would incur the trouble and expense of this protracted litigation, and the employment of so many eminent counsel, merely for the questionable advantage of having the estate settled in the Bankrupt Court, instead of the State Court.

John Thornhill, who appears as the principal plaintiff and creditor, is not in fact a creditor at all. He alleges under oath that the bank owes him $4000, "for forty shares of stock of the said bank, held by "him, upon which the full amount of $4000 has been paid."

He is therefore not only not a creditor, but his interest as a stockholder is identical with that of the bank, and he will receive his share of the assets which may remain after payment of the debts, subject to a settlement of whatever amount may be found due by him to the bank.

It was not until suits had been instituted by the commissioners in the State courts, against the directors, John Thornhill and others, for nearly $4,000,000 damages for mal-administration, that these bankrupt proceedings were instituted.

The whole of these proceedings show that the sole object of the petitioning creditors was to arrest the commissioners in the prosecution of these heavy suits against the directors for damages, by taking the assets of the bank and the management of its affairs out of their hands, and transferring them to the Bankrupt Court, where the directors expect to fare better than in the State courts.

Had this been simply an adjudication of bankruptcy there would have been more force in the objection, that the matter in dispute does not exceed $2000.

But we contend that an appeal will lie from an adjudication of involuntary bankruptcy whatever may be the amount of property owned by the debtor, and whether there be any pecuniary valuation or not.

Proceedings under the bankrupt act are not only highly penal in their character, but with all the

accompanying proceedings against the debtor, the charges of fraud, violation of law, etc., inflict an injury which is not susceptible of a pecuniary valuation.

In the case of Lee vs. Lee, 8 Pet. 45, where the matter in dispute was the freedom of the petitioners, the court held that the value of that freedom was not susceptible of a pecuniary valuation, still they say, "we entertain no doubt of the jurisdiction of the "Court."

It has been decided in the cases of Barry vs. Mercein, 5 H., 103, and De Kraft vs. Barney, 1 Bl. 704, that a claim to the guardianship of a minor is not within the jurisdiction of this Court. The language of the Court is: "The matter in dispute must be money, "or some right, the value of which, in money, can "be calculated and ascertained."

To take away from a person the right to manage his own business, and perhaps, should the charges of fraud be established, and his discharge refused, render him incapable of entering again into business, is nearly equal to depriving him of his freedom.

The constitution of Louisiana of 1812 gave to the Supreme Court of that State "appellate jurisdiction "only, which jurisdiction shall extend to all civil "cases when the matter in dispute shall exceed the "sum of $300."

Under this provision it was held in the case of Rowley vs. Rowley, 19 La. Rep. 557, that the court would

take jurisdiction of a suit for separation from bed and board, although the matter in contestation *was not appreciable in money.*

The Court say: "Upon this question we have not "the slightest doubt of our jurisdiction. * * * "We cannot believe it was the purpose of the framers "of the constitution to confine our jurisdiction in a "question like this to an examination of the *results* of "a separation from bed and board, and yet deprive "us of the power of examining the *cause.* According to "the doctrine of the plaintiff's counsel we can revise "the judgment of the court settling the principles upon "which the community of acquets and gains is to be set-"tled, but we cannot say whether the causes which dis-"solve that community are sufficient * * After "having for more than a quater of a century enter-"tained jurisdiction of cases of this description with-"out question, we are not disposed to abandon it "upon the grounds assumed, * * * Whilst this "Court will not assume powers not given by the con-"stitution and the law, it will not rigidly restrict its "jurisdiction, and deprive a citizen by rigid rules and "technical standards of the right of coming before it, "to claim his rights or redress his wrongs." See also the same effect Knight vs. Knight, 12 La. An. Rep. 59.

In the case of Carter's heirs vs. Cutting, 8 Cr. 251, Appellants petitioned the Orphan's Court of Alex-

andria County, to annul the probate of a will. The petition was dismissed by the Orphan's Court, and on appeal this dismissal was confirmed by the Circuit Court of the District of Columbia. From this decree fo the Circuit Court, an appeal was taken to this Court.

It was admitted that the estate devised was worth several thousand dollars. "If then" the Court say "the probate of the will had any legal operation, and "was merely void, the controversy as to the validity "of that probate was a matter in dispute equal to the "value of the estate devised away from the heirs. "* * * The probate then not being merely void, "but affecting the title to lands exceeding $100 in "value, is a matter in controversy beyond that value "within the purview of the act of 1801."

In the present case it is admitted that the property to be affected by the adjudication of bankruptcy exceeds $100,000 in value.—Rec. pp. 20 and 60.

Not only is the title to this property "affected" as in case of a judgment probating a will, but the decree of bankruptcy has the effect of *divesting* the debtor of the title to this property, and *vesting* it at once in the assignee.

Sec. 14 requires the judge or register to execute an assignment to the assignee of all the real and personal estate of the debtor, with all his deeds, books and papers relating thereto. "And thereupon by *operation*

"*of law*, the title to all such property and estate, both "real and personal, shall vest in said assignee," and all the rights, claims and causes of action of the bankrupt "shall, *in virtue of the adjudication of bankruptcy*, and "the appointment of his assignee be at once vested in "said assignee."

If in a controversy relative to the validity of the probate of a will, the matter in dispute is the value of the property which that will conveys; it must be conceded that in a controversy relative to the validity of an adjudication of involuntary bankruptcy, the matter in dispute is the value of the property which passes by virtue of that adjudication.

If the opinion of the District Judge is correct, that the corporation is dissolved, and that this is a proceeding *in rem* against the property in the hands of third persons, then the value of that property is, as in admiralty proceedings, the amount in dispute.

The decree of bankruptcy in this case, therefore, even if the bank were still in existence, and the property still in its possession, would involve a matter in dispute over $2000.

The interests of appellants, Morgan and others as commissioners and custodians of the assets of the bank, and receiving a yearly salary of $3000 allowed them as commissioners by the State law. (See admissions pp. 20 and 60,) also exceeds $2000.

U. S. Ex. Rel. Crawford vs. Addison, 22 How., 174.

Should this appeal be dismissed, the property of the bank will fall at once into the Bankrupt Court, and be sold by the assignee, who can only convey such title as the debtor had at the date of filing the petition in bankruptcy against him.—Bankrupt Act, Sec. 14.

Would this title be valid?

If the Bankrupt Court had no jurisdiction in this case, "the action of the Court (to use the language of "the Circuit Court) is a nullity, and may be collaterally "impeached."—See printed Rec. p. 75.

In the case of Shawan vs. Wherritt, 7 How., 627, the Court say (on page 643,) when a person proceeded against *in invitum*, is adjudged bankrupt, and "the "Record shows sufficiently that he was a merchant or "trader, and therefore *liable* to be declared a bankrupt. "That the District Court had plenary and exclusive "jurisdiction of the subject matter. That as the Court "had jurisdiction of the subject matter and *person* of "the bankrupt, the decree is thus made conclusive "evidence of the *title of the assignee*."

This is equivalent to saying, if the Court had *not* jurisdiction of the person or subject matter, the decree would not be evidence of title in the assignee.

The dismissal of this appeal will place all the property in the hands of the assignee in bankruptcy, who will be compelled to dispose of it at a sacrifice, in consequence of the defective title which he will give; or he will sell it to innocent purchasers, to whom will

be left the task of defending the validity of these proceedings in bankruptcy, and who will hereafter find that they have acquired no title to their property, and have purchased only a subject of endless litigation.

Had the decree in this case been confined to the limits prescribed by law, and simply declared the defunct bank, or any other dead corporation or person, a bankrupt, there might possibly be no appeal, although we are far from admitting it; but no harm to any one could result from it, the person or corporation to be effected by it being beyond the jurisdiction and and out of reach of the process of all courts.

But when the assignee appointed, who under the 15th section is the only person authorized to "demand "and receive from any and all persons holding the "same, all the estate assigned," should attempt to take property formerly belonging to the dead person or corporation from the possession of the executor, administrator, commissioner or other officer entrusted by the laws of the State with the custody and administration of the same, they certainly would have the right to defend themselves and show the want of jurisdiction in the Bankrupt Court, and the illegality of the adjudication, or urge any other legal ground of defence, and, if judgment were rendered against them, to appeal to the Supreme Court, as in other cases.

This is really the decree of which we complain, for as we have said before, a simple decree of bankruptcy

might not in reality seriously affect the rights of the commissioners, so that it does not interfere with the property in their possession. But the petitioning creditors have sought to avoid this difficulty. They did not think it prudent to proceed regularly and have the bank first adjudged bankrupt, then an assignee appointed and leave to him the duty of instituting proceedings against the commissioners for the possession of the property, as required by section 15. No doubt could exist in regard to the right of appeal from a judgment rendered in such a case. They therefore charge the commissioners with acts of bankruptcy, and ask that they also be cited and adjudged bankrupt.

They also procured the rendition of a decree, not only adjudging the bank a bankrupt, but also (beyond what they ask for in their petition) requiring not only the commissioners, as parties defendant, but also all persons holding any of the property, to surrender it to the proper officers of the Court, all in the same judgment, and we are sought to be deprived of the right to appeal from the decree taking the property from us, because it is illegally appended to and made part of the decree of bankruptcy, when if rendered properly and in a suit between the proper parties, no doubt would exist as to that right.

We however most respectfully submit that we have at least a right to an appeal from that portion of the decree which orders the property to be surrendered

up, whether the decree adjudging the corporation to be a bankrupt be appealable or not. The Bankrupt Court having no jurisdiction to take property out of the hands of the officers of the State Court.

Ferguson vs. Ferguson, 36 Missouri, 197.

Westcott vs. Bradford, 4 Wash. C. C. 493.

Peck vs. Jenness, 7 How. 612 (624).

Taylor vs. Carryl, 20 How. 584 (596).

Morris' Cotton, 8 Wall 507.

In Re Clark vs. Bininger, 3 B. R. 130.

Same case in N. Y. Sup. Court, 3 B. R. 129.

No precedent can be found for such a proceeding as this; and if it be correct, all those provisions of the bankrupt act which provide for suits by assignees against parties holding property of the debtor are useless.

The petitioning creditor may cumulate all those suits with his petition *in invitum* against the debtor, and have all questions as to the right of property disposed of in one summary proceeding, in which only one insignificant creditor is a party.

The mass of the creditors who should be parties to such suit through their legal representative, the assignee in bankruptcy, are not permitted to be heard; and it is by means of these unusual and illegal proceedings, carried on *without the proper parties*, that the petitioning creditors seek to avoid an appeal to the Supreme Court, from a judgment taking from the

commissioners property committed to their charge by the laws of the State.

The bankrupt law certainly was not intended to deprive a person of his right to defend in the usual manner, his title to the property in his possession, by whatever right or title he might hold it, against adverse claims set up against him by any one, even the officers of the Bankrupt Court.

In the case of New York Kerosine Oil Co.. 3 B. R. 31, it was held that even the assignee in bankruptcy could not proceed against a mortgage creditor, by the informal and summary means of petition, from which it was doubtful whether an appeal would lie; but should proceed by bill in equity, from which the sixth section gives an appeal to the Circuit Court, and the ninth section gives an appeal to the Supreme Court; and the pleadings were ordered to be so changed as would leave no doubt as to the right of appeal. See also, to same effect In Re Bonesteel, 3 B. R. 127; and In Re Ballou, 3 B. R. 177.

These decisions, it is true, conflict with those in the cases In Re J. C. Neal vs. Buckwith, 2 B. R. 82; and In Re J. N. Norris, 4 B. R. 10.

Under the eighth section of the bankrupt act, as explained by the Chief Justice in the Alexander case, 3 B. R. 6, a decree of the District Court, ordering third persons to surrender up property to the assignee in bankruptcy could only be reviewed in the Circuit

Court by appeal. It could not be taken there by petition of review. The law having prescribed a particular manner in which suits brought by assignees against persons holding adverse claims, shall be taken to the Circuit Court for review; cases of that character must go there in that manner, or not at all. United States vs. Nourse, 6 Pet. 470, (493). The manner in which a suit is brought, whether by bill in equity, or by the summary process of petition, does not change its object and nature; nor can it defeat or affect provisions of law designed for suits for those objects, or of that nature.

In the case of Exparte Christy, 3 How., 292 the assignee in bankruptcy proceeded against the City Bank, an adverse claimant, by petition, summarily, in the District Court.

It was charged by the bank that the summary jurisdiction of the District Court was invoked expressly in order to deprive the bank of an appeal to the Supreme Court.

Mr. Justice Catron says, on page 322: That this Court has no jurisdiction "to revise the proceedings "of a Bankrupt Court, is our unanimous opinion."

The majority of the Court went further, and held that the proceedings might be in the form of summary proceedings in equity, and that the Circuit Court might even interpose its revising powers, and prevent any plenary proceedings which might prolong the trial

of the case, should any such be attempted, the sixth section of the act of 1841, having provided that the jurisdiction of the District Court should be "exercised "summarily, in the nature of summary proceedings in "equity."

All this has been changed by the act of 1867. The words "summary" and "summarily" are not to be found in that act, nor does it say the proceedings in the District Court should be carried on *as in equity*.

The suppression of the provision quoted above from the sixth section of the act of 1841, and the other changes in the provisions and phraseology of the act of 1867 from that of 1841, (which we have shown in a comparison of the two acts appended hereto, and to which we respectfully refer,) show that the whole policy of the law was to be changed.

Summary proceedings in equity from which appeals could not be taken, were allowed by the act of 1841, because it was not then the policy of congress to allow appeals in any case in bankruptcy.

Having in the act of 1867 not only given the Supreme Court appellate jurisdiction, but, also required the Justices of that Court to frame general orders to regulate the practice and procedure of the District Courts in bankruptcy, the forms of petitions, etc., and generally for carrying the provisions of the act into effect, Congress has not, and could not consistently have authorized the District Courts to exercise

their jurisdiction in such manner as would defeat the evident policy of the law, by depriving the Supreme Court of the appellate jurisdiction given to it by the act.

It would moreover be strange, after requiring the Justices of the Supreme Court to prescribe rules and regulations governing the proceedings, practice and procedure in the District Court, that they should deprive that Court of all power or voice in the enforcement or interpretation of those rules, and in giving them a uniform operation.

Injunctions upon third persons under section 40 are sometimes combined with petitions against the debtor, but they are temporary only. They "restrain the "debtor and any other person *in the meantime* from "making any transfer," &c.

If the property is actually in possession of the bankrupt at the time of filing his petition in bankruptcy, it passes into the hands of the assignees the instant they are appointed. If it is in the hands of others, the proper proceedings for its recovery must be instituted by the assignee, who alone is the proper party, and authorized to institute such a suit.

In Re Vogal, 3 B. R. 49.

Cozzens vs. Hall, 3 B. R. 73.

In Re Kintzing, 3 B. R. 52.

Let us consider for a moment what would be the result, if it should be held that no appeal lies from a decree adjudging a debtor to be a bankrupt involuntarily.

It must be recollected that it has never been decided that an appeal or writ of error would not lie in such a case. It was held that appeals could not be taken in bankrupt cases under the law of 1841. But these were all cases *already in bankruptcy*. After adjudication, no question arose as to the validity of that adjudication, whether it was actually a case of bankruptcy, or whether it was a misapplication and abuse of the bankrupt law.

Proceedings *in invitum* in bankruptcy might be instituted by an insignificant creditor against some of our wealthiest citizens or corporations, and from error, ignorance or improper motives, without any legal grounds whatever, a decree rendered adjudging them to be bankrupt, and perhaps, as in this case, ordering all parties holding any of their property to surrender it up.

No matter how illegal and irregular the proceedings may have been.

Nor whether the Court had jurisdiction of the person of the debtor or the subject matter or not.

The value of the property which would pass by virtue of the adjudication might be millions, of all of which the debtor would be deprived of the ownership and possession by the decree of bankruptcy, and yet he would not have the right to come before this tribunal for redress.

Again, we would respectfully suggest that we are

entitled to an appeal from the decree of the Circuit Court in this case, independent altogether of the bankrupt law.

The Circuit Courts are not "constituted Courts of Bankruptcy," as the District Courts are. They retain their original character as Circuit Courts, and as such—"as a Court of Equity"—take cognizance of the new subjects of jurisdiction committed to them by the second section of the bankrupt act, which only enlarges their jurisdiction.

In the case of Exparte Zellner, 9 Wall, 244, this Court says, the jurisdiction of both the District and Circuit Courts has been enlarged since their organization; "and it has never been doubted but that the "judgments or decrees founded upon these new sub-"jects of jurisdiction were liable to the operation of "these general provisions in respect to writs of error "and appeals."

Finally we contend that we have a constitutional right to an appeal in this case.

It is the constitution, not the acts of congress which give to the Supreme Court its appellate jurisdiction. It gives this jurisdiction in all cases arising under the laws of the United States, where it has not original jurisdiction, unless excepted by some act of congress, provided rules and regulations have been established by congress for carrying up such appeals.

Wilson vs. Mason, 1 Cranch 45 (91 and 92).

Union Ins. Co. vs. U. S., 6 Wall, 759 (765).
Durosseau vs. U. S., 6 Cranch, 307.
Martin vs. Hunter's lessee, 1 Wheaton, 305 (338).
Wiscart vs. Dauchy, 3 Dallas, 321 (327).
Castro vs. U. S., 3 Wall, 47.
Carter's heirs vs. Cutting, 8 Cranch, 251.
Exparte McCardle, 7 Wall, 507.

Comparison of the Bankrupt Act of 1867 *with that of* 1841, *relative to right of appeal.*

In addition to the provisions contained in the ninth and tenth sections of the act of 1867, the provisions and phraseology of the other portions of that act, differing as they do from the act of 1841, show that the right of appeal was intended to be allowed in all cases not expressly denied by the act itself.

Section 24 designates certain cases arising under the act, in which appeals from the Circuit Court to the Supreme Court are *not* allowed, and declares that the decision of the Circuit Court "shall be conclusive."

Provisions similar to this and the ninth section of the act of 1867 are not to be found in the bankrupt act of 1841, nor is the right of appeal to the Supreme Court recognized therein in any manner; on the contrary the whole tenor of the act indicates directly the

reverse; and it was therefore held that no appeal could be taken to the Supreme Court in any case arising under that act.

Nelson vs. Carland, 1 How., 265.

Exparte Christy, 3 How., 292.

Crawford vs. Points, 13 How., 11.

The evils resulting from this state of things are shown in the dissenting opinion of Mr. Justice Catron in the case of Nelson vs. Carland, wherein he says: "No law that congress ever passed has in it to a greater "decree the elements of various construction and con- "fusion than the bankrupt law of 1841, when ad- "ministered by more than thirty judges acting separ- "ately; if all are exempt from the revising power of "this tribuual, created for the purpose (amongst "others) of producing uniformity of decision and con- "struction in all cases over which its jurisdiction "extends."

That if this Court had not a revising power, the result would be that, "in every district in the United "States the law might be differently construed; and "the wildest prediction could hardly have exceeded "the reality; so far from being 'a uniform system of "bankruptcy' in its administration, it has become, by "the various and conflicting constructions put upon it, "little more uniform than the different and conflicting "State insolvent laws."

If this was the result, under the act of 1841, when

the power of reviewing and revising the decrees of the District Courts rested alone with the Justices of the Supreme Court, although presiding separately, how much greater would be the evil which would result from the absence of the right of appeal, now that the Circuit Courts are differently organized, and the supervising powers vested in them must necessarily be exercised almost entirely by the several Circuit Judges, who never meet together, and have no opportunity for consultation and interchange of views.

The present bankrupt law was evidently intended by congress to remain *permanently* on the statute book, and we can not believe these considerations were overlooked by them in passing the act.

It was obviously their intention to remove these evils. Hence we find also the very important and significant changes in the provisions and phraseolgy of other portions of the act of 1867 from that of 1841.

The sixth section of the act of 1841 provides that the jurisdiction of the District Court is "to be exercised *summarily* in the nature of summary proceedings in equity." Whereas, the act of 1867 does not contain these words, nor any others of similar import.

Section tenth of the act of 1841 provides that "in order to insure a speedy settlement and close of the proceedings in each case in bankruptcy, it shall be the duty of the Court to order and direct a collection

"of the assets, and a reduction of the same to money, "and a distribution thereof, at as early periods as "practicable. * * * And the pendency of any suit "at law, or in equity, by or against such third persons, "shall not postpone such division and distribution, ex- "cept so far as the assets may be necessary to satisfy "the same; and *all the proceedings in bankruptcy* in "each case shall, if practicable, be *finally adjusted, set- "tled and brought to a close by the Court, within two "years after the decree* declaring the bankruptcy."

No provision of this character can be found in the act of 1867. No limited time is fixed within which bankrupt estates must be finally settled; on the contrary, express provision is made for delay in settling them.

Section 27 of the act of 1867 requires a general meeting of creditors at the expiration of three months from the date of adjudication of bankruptcy, or as much earlier as the Court may direct; and the next section requires like proceedings and a final dividend to be made at the expiration of the next three months, or earlier if practicable, "unless any action at law or suit in equity be pending."

The 17th section of the act of 1867 also provides for delays by litigation or other causes. It says: "When it appears that the distribution of the estate "may be delayed by litigation or other cause, the "Court may direct the temporary investment of the "money belonging to such estates in securities."

These changes are significant, and manifest clearly the intention of congress to remove the restriction against appeal, which the speedy and summary proceedings required of the District Court by the act of 1841 seemed to imply; and when any action at law or suit in equity is pending, the final settlement of the estate may now be postponed until these suits are decided; whereas, under the act of 1841, the pendency of such suits could not postpone the settlement of the estate beyond two years. In fact, nearly all the provisions of the act of 1841, which indicate that "the "manifest object of the act was to provide speedy "proceedings, and the ascertainment and adjustment "of all claims and rights in favor of or against the "bankrupt estate, in the most expeditious manner," (3 H. 314,) are omitted in the act of 1867.

Nothing is contained in the latter act which shows that any unusual haste or expedition is required in cases arising under it, more than in all other suits in equity. The words "summary," "summarily," 'speedy," and others of like meaning, are not to be found in the act, having been, without doubt, intentionally omitted.

It is evident that the whole policy of congress in passing the act of 1841 was to be changed. *Uniformity* in the construction and application of the law, and the pleadings, practice, procedure and decisions under it, was no longer to be sacrificed to speed and haste in

the settlement of estates. The object of the framers of the present act being clearly to conform to the provisions of the constitution, and make it "a *uniform* system of bankruptcy throughout the United States," which had been shown by the decision of Mr. Jastice Catron and others, it could not be as long as different Judges were to interpret the act, each after his own fashion, without any supervising power over them.

If it be conceded, as we cannot doubt it will, that the act allows appeals in *some* cases, it must necessarily follow that they are allowed in all cases unless expressly refused. The only exceptions to the right of appeal are contained in the 9th, 24th and 6th sections, and perhaps section 14, general clause 50, and all cases not embraced in those exceptions stand upon the same footing, and are equally entitled to the right of appeal.

The act gives no preference to one class of cases over another, nor can we perceive any reason why an appeal should be denied in this case more than in any other.

In support of this position we have the high authority of Mr. *Justice Nelson.*

In the case of New York Kerosine Oil Company, 3 B. R. 31, he says: "The ninth section allows an appeal "or writ of error from the Circuit to the Supreme "Court, where the matter in dispute exceeds $2000."

It will doubtless be urged that the subject of appeals in proceedings in bankruptcy, except where specially

given or denied by the act, is left to the Supreme Court to be regulated by decision or by general order under the tenth section as they may think best.

With cases where appeals are *specially* given (if there are any such) or denied by the act, we have nothing to do. This is not one of them. As to all other cases the act either allows or refuses appeals. If it allows them, the Court cannot refuse them. If it refuses them, the Court cannot allow them, and it would be useless for the Court to allow appeals if they are already allowed by law, or to refuse them if they are already refused by law.

But it may be urged that congress has neither allowed nor refused appeals except in the cases particularly specified, but has left it to the Justices of the Supreme Court to say in which of these cases appeal should be allowed and in which refused.

We do not think section tenth sustains this position.

Authority "for regulating the practice and procedure "upon appeals," does not convey the power to *grant* or *refuse* them, but only to regulate the practice and mode of proceeding on appeals taken in cases where they *are* allowed by law. The power to *regulate* is not a power to *create* or *destroy*. This is the construction put upon the act by this Court in framing General Order No. 26, which provides that "appeals in equity from "the Circuit to the Supreme Court of the United "States shall be regulated by the rules governing "appeals in equity in the Courts of the United States."

If no appeals are allowed by *congress* to the Supreme Court, to what cases does this rule apply? The Supreme Court has not so far granted the right of appeal in any case arising under the bankrupt act. Nor can the rule be said to apply to cases where appeals are "*specially given*" by the act, for there are no such cases.

If, therefore, the construction contended for be correct, the rule must be considered as *allowing appeals* in all cases in which they are allowed "in equity in the Courts of the United States," unless denied by the act itself, otherwise the rule would be wholly useless.

But we contend that granting the right of appeal is not a judicial but a legislative act. It is a power which cannot be delegated by congress to nor exercised by the Justices of the Supreme Court. See Hayburn's case and notes, 2 Dall., 409; United States vs. Ferreira, 13 How., 40; and note by Chief Justice, p. 52.

Were this case brought up by writ of error, it would present more difficulty, no rules or regulations having been provided for bringing up such cases, as was thought to be necessary in case of appeals.

This case was heard and determined by the Circuit Court "as a Court of Equity," and could therefore be brought before this Court only by appeal.

All of which is most respectfully submitted.

COOLEY & PHILLIPS,

For P. H. Morgan et als.,
Commissioners and Appellants